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L. Un. States. B 54.1 Prizes.

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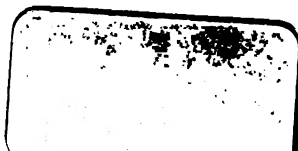
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**REPORTS**  
**OF**  
**CASES IN PRIZE,**

**ARGUED AND DETERMINED**

**IN THE CIRCUIT AND DISTRICT COURTS OF THE UNITED STATES,**

**FOR THE SOUTHERN DISTRICT OF NEW YORK.**

**1861-'65.**



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**By SAMUEL BLATCHFORD.**

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**WASHINGTON:**  
**GOVERNMENT PRINTING OFFICE.**  
**1866.**





## JUDGES

OF THE

CIRCUIT AND DISTRICT COURTS OF THE UNITED STATES FOR  
THE SOUTHERN DISTRICT OF NEW YORK

DURING THE PERIODS OF THESE REPORTS.

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### CIRCUIT COURT.

SAMUEL NELSON,

*Associate Justice of the Supreme Court of the United States.*

### DISTRICT COURT.

SAMUEL R. BETTS,

*District Judge of the United States for the Southern District of New York.*



## P R E F A C E

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The compilation of the cases contained in this volume was undertaken at the request of the Department of State of the United States. The cases reported are all the prize suits decided in the circuit and district courts of the United States for the southern district of New York during the rebellion, with, perhaps, the exception of a very few cases in which decrees were entered without any opinion or memorandum of decision having been filed by the court.

For the information of those who are not acquainted with the constitution of the courts of the United States, it may be well to say that the district court is held by the district judge, and that the circuit court is, as a general rule, held by the justice of the Supreme Court of the United States, who is assigned to the circuit embracing the court, and the district judge of the district, sitting jointly, or by either of them, sitting alone. But it is provided by law that, in all cases which are removed by appeal or writ of error from a district to a circuit court, judgment shall be rendered in conformity to the opinion of the judge of the Supreme Court presiding in the circuit court. Practically, therefore, the justice of the Supreme Court always sits alone in hearing cases removed by appeal or writ of error from the district to the circuit court. Down to the 3d of March, 1863, appeals from decrees made by the district court in prize cases were taken to the circuit court in like manner as appeals to the circuit court from decrees made by the district court in other cases. But by the seventh section of the act of Congress approved March 3, 1863, entitled "An act further to regulate proceedings in prize cases, and to amend various acts of Congress in relation thereto," (12 *U. S. Stats. at Large*, 760,) it was provided that appeals from the district courts of the United States in prize causes should be directly to the Supreme Court. This provision was re-enacted by the thirteenth section of the act of Congress approved June 30, 1864, entitled "An act to regulate prize proceedings and the distribution of prize money, and for other purposes," (13 *U. S. Stats. at Large*, 310,) and is still in force. Therefore, after the 3d of March, 1863, no appeals in prize cases were taken from the district court to the circuit court.





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CASES IN PRIZE  
IN THE  
DISTRICT COURT OF THE UNITED STATES  
FOR THE  
SOUTHERN DISTRICT OF NEW YORK.

---

THE BARK HIAWATHA AND CARGO.

The act of July 13, 1861, (12 *U. S. Statutes at Large*, 255,) "further to provide for the collection of duties on imports and for other purposes," did not rescind the prior proceedings of the President in authorizing acts of war by the United States or in establishing blockades of the enemy's ports, or make void captures previously made for violations of such blockades.

The act of August 6, 1861, (12 *U. S. Statutes at Large*, 319,) "to confiscate property used for insurrectionary purposes," is not to be regarded as a legislative determination that a vessel belonging to a citizen of a State in insurrection was not, before the passage of that act, confiscable merely as the property of an insurrectionist or rebel, without an enactment of Congress to that end.

The pleadings in prize cases should be simple, direct, and free from technicalities.

The district courts of the United States have exclusive jurisdiction in prize cases, without restriction to cases of seizures within their territorial dimensions or on the high seas.

The existing war between the United States and the rebels is a defensive war on the part of the former. No formal declaration of war by the President was necessary to render lawful the means adopted by him to repel the warlike measures of the enemy.

A blockade of the enemy's ports is as lawful a means of war, in civil warfare, as it is in a war between nations foreign to each other.

Under the law of nations, the rights incident to a war waged by a government to subdue an insurrection or revolt of its own subjects or citizens are the same, in regard to neutral powers, as if the hostilities were carried on between independent nations.

Under the proclamation of blockade of April 19, 1861, it is not necessary to the lawfulness of the capture of a vessel seized for violating the blockade, that a warning should have been previously indorsed on her register, where, at the time of capture, she had entered into or escaped from the blockaded port, or possessed knowledge or notice of the blockade.

Citizens of the United States levying war against the government of the United States are enemies, and their property captured at sea is subject to confiscation. Persons abiding within the authority of such enemies become enemies because of their residence, without regard to their private sentiments or the locality of the place of their property.

A notice of a blockade to the officials of a neutral government is a sufficient notice of it to the subjects of such government.

The act of egress is as culpable as the act of ingress, when done in fraud of a blockade.

On notice of a blockade, a neutral vessel has a right to withdraw from the blockaded port, with all the cargo honestly laden on board before the commencement of the blockade.

The acts of a master in breach of a blockade affect the cargo equally with the vessel, if the cargo is laden on board after the blockade has become effective as to the vessel.

A warning on the register of a vessel is not necessary to establish notice of a blockade where actual notice of it to the master or owner is satisfactorily made out otherwise.

### THE BARK PIONEER AND CARGO.

Vessel and cargo condemned, as enemy property, because belonging to resident citizens of the enemy's country.

### THE SCHOONER CRENSHAW AND CARGO.

Vessel and part of cargo condemned, as enemy property, because belonging to resident citizens of the enemy's country.

Citizens and subjects of the capturing nation are interdicted all trade with the enemy in time of war, and property purchased by them in the enemy's country during the war is, when taken at sea in an enemy vessel, lawful prize.

Vessel condemned, also, for violating the blockade, after notice of its existence to her master.

A portion of the cargo condemned, because laden on board after the blockade and notice thereof to the claimants.

A part of the cargo restored, being the property of neutrals who had no notice of the blockade, but no costs allowed against the captors.

### THE BARK WINIFRED AND CARGO.

Vessel condemned, as enemy property.

A part of her cargo condemned, as enemy property, although under hypothecation to a neutral merchant for advances on the invoice and bill of lading.

The title of the absolute owner prevails, in a prize court, over the interest of a lien-holder, whatever the equities between those parties may be.

### THE SCHOONER HANNAH M. JOHNSON AND CARGO.

Mode of pleading in an answer and claim commented on.

The prize law regards property which was enemy property when shipped as continuing to be such, although consigned by a bill of lading to other parties, unless clear evidence is given of a change of title.

Vessel released as not being enemy property, and restored on payment of costs, there having been reasonable cause for her seizure.

Cargo condemned as enemy property, unless further proof be furnished within ten days as to ownership of cargo.

### THE BARK GENERAL GREEN AND CARGO.

Vessel condemned as enemy property.

Cargo restored, but without costs or damages, there being probable cause for the capture, it being laden in an enemy bottom during the war.

### THE BRIG HALLIE JACKSON AND CARGO.

A vessel is clothed with the character of the flag she wears.

Vessel condemned as enemy property, and for an attempt to violate the blockade.

A vessel approaching a blockaded port, with intent to violate the blockade, is not entitled to be warned off.

Cargo condemned as enemy property. It was also shipped for an enemy port, with intent to violate the blockade.

### THE SHIP NORTH CAROLINA.

Vessel condemned as enemy property.

### THE SCHOONER FOREST KING AND CARGO.

Cargo restored, being neutral property, and there having been no attempt to violate the blockade; but no costs or damages awarded, as the vessel was confiscable in part.

In the absence of notice of a blockade, an inquiry at a blockaded port excused.

An entry into a blockaded port to obtain necessary supplies excused.

A part of the vessel condemned as enemy property: the rest of the vessel restored.

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The Hiawatha and others.

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## THE SCHOONER LYNCHBURG AND CARGO.

What statements are necessary in an answer and claim.

Vessel and cargo condemned as enemy property.

What is necessary to be proved by parties claiming a lien for advances on enemy property captured as prize in an enemy vessel.

In prize law, a bill of lading transmitted to a party to cover his advances on cargo shipped, does not pass the title to the cargo.

(Before BETTS, J., August 8 and 29, 1861.)

BETTS, J.: The bark Hiawatha, the bark Pioneer, the schooner Crenshaw, the bark Winifred, the schooner Hannah M. Johnson, the bark General Green, the brig Hallie Jackson, the ship North Carolina, the schooner Forest King, and the schooner Lynchburg, were all captured as prizes of war by various public armed vessels of the United States, and sent into this port in charge of prize crews, consigned to the district judge, to be proceeded against under such captures.

They were accordingly committed by the judge to the possession of the prize commissioners of this district, when severally brought before him, and were afterwards libelled by the United States Attorney, and were attached by the marshal on process issued on each several libel, and thereupon brought into court.

Appearances were entered in court in each suit, and answers and claims were interposed by various claimants, conformably to the practice of the court, and the causes were then placed upon the docket for hearing, and promptly brought to trial in their order at a public sitting of the court.

A vital part of the defences in each of the several suits, interposed by the claimants, consisted of propositions of law and fact common to all the actions, although, beyond these general defences, there were presented points of claim and exception more or less special to each particular suit.

To secure a satisfactory discussion of those points common to all the suits, and avoid the labor and procrastination arising from reiterating the debates on the same issues in each individual action, an understanding was adopted by the counsel conducting the causes, and approved by the court, that the arguments covering those common grounds of defence should be virtually limited to the issues made in three cases, the bark Hiawatha, the bark Pioneer, and the schooner Crenshaw, with the reservation of the right to parties in the other suits pending to be heard upon the facts and law peculiar to the suits in which they were specially concerned.



It was understood and agreed between counsel, that official documents, correspondence, proclamations and enactments in print, as published by authority of the United States and British governments, by the separate seceded States, and by the Confederate States, should be read and used as evidence without other proof, to wit: The proclamations of the President of April 15, 19, and 27, and May 2, 1861; his message to Congress, of July 5, 1861; the proclamation of Commodore Pendergrast, of April 30, 1861; the correspondence of the Secretary of State with Lord Lyons, on the subject of the blockade of American ports, printed by Parliament; the secession ordinances and resolutions of the States of Virginia, South Carolina, Louisiana, Florida, Texas and Georgia; the act of the confederate government, declaring a state of war with the United States to exist; and the proclamation of Jefferson Davis, president thereof, of April 17, 1861.

Those causes were discussed with distinguished ability and learning, orally and upon written and printed points and briefs, and nine days of the sittings of the court were devoted to hearing those particular actions. They were argued by the district attorney, (Mr. E. Delafield Smith,) and Mr. William M. Evarts, on the part of the libellants, and by Messrs. Charles Edwards, Benjamin D. Silliman, and Daniel Lord, on the part of the claimants. For six days ensuing, further arguments were addressed to the court on collateral and auxiliary points embraced within those three particular cases, together with occasional supplementary observations upon the main topics also; and very ample and exhausting discussions were added upon the facts and law involved in the other seven causes above named. All these considerations were comprehended in the body of ten suits pending before the court, and were regarded by counsel as essentially pertinent and important to the just appreciation and decision of the respective causes. Those discussions were maintained by the district attorney, by Mr. Woodford, assistant district attorney, and by Messrs. Evarts and Upton, for the libellants and captors, and by Messrs. Edwards, Lord, Wright, Merrihew, Woodman, Mason, Donohue, Burrill, and Whiting, for the respective defendants and claimants.

After the hearings in the above suits were terminated, Mr. Lord produced and read in court the act of Congress entitled "An act further to provide for the collection of duties on imports and for other purposes," approved July 13, 1861, which was then found just published in the newspapers, and submitted to the court that the true import and effect of the act was to counteract and rescind all the pro-

ceedings of the President in authorizing acts of war on the part of the United States, or in establishing the blockades of ports, or the seizures or captures referred to in the pleadings and proceedings in those several suits, and that the statute amounted to conclusive proof that those acts of the President were without authority of law, and invalid.

Whilst the decision in these several causes was in course of preparation, Mr. Silliman, with the consent of the district attorney, enclosed to me a copy of an act of Congress entitled "An act to confiscate property used for insurrectionary purposes," (cut from a newspaper,) but the date of the approval of which, if ever made, is not stated, (and I am inclined to the opinion that the bill was included, with other provisions, in an act of like title passed at the close of the session, a copy of which has not yet been furnished me,) as being a clear exposition of the law, and amounting to a legislative determination, that the vessel now on trial was not confiscable merely as the property of insurrectionists or rebels, without an enactment of Congress to that end.

It is observable that no express declaration is used, in either of the above enactments, that it was the purpose of Congress to give those acts a retrospective or retroactive effect, or to pronounce a legislative opinion upon the true purport and scope of municipal or public law in reference to those subjects, as it then existed.

As the statutes were passed in the light of the antecedent acts of the President, and with full knowledge of the considerations upon which those acts were founded, and of the assertion by the Executive of their imminent necessity and justness, as measures conducing to the support of the national defence and existence, and the enactments, in terms, no way disclaim or disapprove of the action of the Executive in respect to those measures, the implication, in my judgment, would be that the intent of Congress was to signify an implied sanction to the employment of the powers used by the President, rather than to disaffirm or rescind the policy or provisions of the measures adopted by him.

It is the established rule of construction to interpret statutory law as taking effect from the time of its passage, and not as varying the law or its administration by retroactive operation (*Matthews v. Zane*, 7 Wheat., 211; 1 Kent's Comm., 455, notes.)

If a statute may avail retrospectively in any description of cases, it would seem that the purpose of the legislature to give it such effect should be manifest in the terms of the act, or be unmistakably deducible from the intent of the enactment and its policy. (1 Kent's Comm.,

456, note *b*.) But it does not seem to me it can rightfully be claimed that there is any legal incongruity with the propriety of previous administrative acts performed by the Executive, of high moment and exigency in his opinion, although Congress may subsequently appoint a precise law for future occurrences of a like nature ; nor that such enactment of a permanent law would draw after it a doubt of the validity of the Executive acts previously performed under the pressure of a political and public necessity ; nor that a law declaratory of the rightfulness or invalidity of those acts would control the interpretation in a court of justice of the authority previously used. (1 Kent's Comm., 456, note *b*.)

In my opinion, however, neither of the acts referred to is to be interpreted as countervailing or derogating from any powers exercised by the President before their passage, and which were within his official competency ; nor were those acts passed by Congress with intent to have such effect.

The pleadings in all the cases seem to have been constructed on a common understanding, and they essentially put in contestation the main features of fact and law which afford grounds of prosecution and defence in a prize court upon the subjects now in litigation here.

The matters debated in exception and bar to all the suits may be classed under five general heads :

1. That this court, as a prize court, or otherwise, has no jurisdiction over the actions.

2. That the public disturbances now subsisting throughout the country, or between different portions of the United States, do not constitute a state of war, carrying with it the consequences or incidents of public war, under the public law or law of nations.

3. That no lawful blockade has been established by the government of the United States against any port within the United States ; nor has a blockade been maintained conformably to the rules of the law of nations, or been violated against such rules, within the United States.

4. That no particular State, or number of particular States, or the citizens or inhabitants of particular States, can become or be treated as enemies of the United States, by the government of the latter.

5. That the President of the United States has no power, without authorization by Congress, to create or declare a state of war with any State or States of the United States, or to establish a blockade of any port or ports within such State or States.

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The Hiawatha and others.

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It is not attempted, in this summary of the points raised in bar of the suits under prosecution, to reproduce the objections with the formalities under which they were presented. It is, however, intended that all grounds of defence embraced within all the causes of action alleged in the libels shall be distinctly met and disposed of by the judgment of the court.

Proceedings in prize courts are subject to different considerations from those in the instance courts of admiralty, (*The Athol*, 1 Wm. Rob., 380,) and may be framed with great simplicity and directness. (2 Wheat., Appendix, p. 19.) An averment that the capture was prize of war would, in ordinary instances, be sufficient fulness of pleading to call out the defences of claimants against the seizure. (*The Fortuna*, 1 Dods., 81.) A like freedom from technical formalities, or diffusiveness in pleadings in defence, is allowed and encouraged in prize proceedings.

The libels now under consideration have adequate amplitude of averments to cause condemnation of the property seized, if it be not protected by the defences set up. The main stress in all the suits, therefore, lies in the defensive matters put forth against them.

The objection taken to the jurisdiction of this court rests on the limitation of jurisdiction over civil causes of admiralty and maritime jurisdiction to cases of seizures within its territorial dimensions, or on the high seas. (1 U. S. Stats. at Large, 76, sec. 9.)

The Constitution of the United States confers upon the judiciary cognizance of all cases of admiralty and maritime jurisdiction. (Const., art. 3, sec. 2.)

In 1794, the Supreme Court, after hearing a protracted argument, decided that the district courts possess, under this grant in the Constitution, all the powers of a court of admiralty, whether considered as an admiralty court specially or a prize court. (*Glass v. The Sloop Betsey*, 3 Dallas, 16; *Penhallow v. Doane's Administrators*, Id., 97; *Jennings v. Carson*, 4 Cranch, 2.)

Under the English jurisprudence, prize cases appertained to the jurisdiction of the admiralty court, as a part of that system; (*Le Caux vs. Eden*, Dougl., 594, note;) although the authority of the admiralty judge to hear and determine prize causes depended entirely upon independent and separate commissions issued to the judge. (2 Chitty's Gen. Practice, 538, ch. 5, sec. 12.) That doctrine in respect to the admiralty was also applied to our system by the Supreme Court, in the decision above cited, before Congress had designated the

tribunals which should specially take cognizance of the prize branch of admiralty jurisdiction. Since that time the appointment of that jurisdiction by Congress is made exclusively to the district courts, without any restriction to territory or place. (2 U. S. Stats. at Large, 759, 761, secs. 4, 6.) And more recently the doctrine is declared that the admiralty court possesses the instance and prize jurisdiction. (*Jecker v. Montgomery*, 13 How., 498.) The practice only in the prize court, after it takes cognizance of the case, is to be "as in civil cases in admiralty." (*Wheat. on Captures*, 273.) The exception to the jurisdiction of the court is, accordingly, overruled.

The other general propositions brought under consideration in these proceedings respect essentially the acts of the President of the United States, and their nullity towards proving a state of public war to exist between the United States and the insurgent and rebel forces now carrying on hostilities against the United States and its government; and the other various branches under which the defences were discussed may well be comprehended in the general topic respecting his powers as Chief Magistrate, particularly as no point of moment is further contested in respect to the blockade, except in regard to the adequacy of notice, and that particular point in the defences may be deferred to the cases in which it specifically arises.

It is insisted, on the part of the defences, that the President, under the Constitution, had no power, upon the facts before the court, to institute, declare or recognize, by executive acts, a condition of war between the United States and the insurgents and their forces, which will carry with it, in behalf of the United States, the incidents of a public war in relation to their enemies in the contest, and also to neutral nations, as between them and this government. As consequent to that position, it is urged that the steps taken by the President to establish a blockade of ports in the possession of the insurgents are inoperative and void to that end, because the insurgents cannot be, within the meaning of the public law, enemies of the United States, but are only citizens of the same country, in a state of internal and domestic contention; and because the President has no authority, under the Constitution and laws of the United States, to declare and impose a blockade of any port or place, and particularly not of one within the limits of the United States; and, further, that the preliminaries and conditions indispensable to a valid blockade, by the law of nations, have not been observed and fulfilled in any of the cases now on hearing.

It is first to be observed, in respect to the general bearing and fea

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tures of these defences, which seem grounded on the assumption that the President initiated and inaugurated the war against the rebels or insurgent enemies, that no public or private document, or official act of the President, is given in proof, conducing to show that the existing state of hostilities was produced by any authority or act of the government of the United States. The war, so far as the government has been proved to be an actor in it, and so far as the evidence characterizes it, has been wholly defensive, and in protection of the property and existence of the government itself, and in no particular, up to the captures in question, did it partake of the character of an offensive and aggressive war in its conduct on the part of the United States.

The question pressed earnestly during the discussion, whether the President can, without the authority of Congress, declare or initiate an offensive war, becomes, therefore, merely speculative, on the merits of this debate. The inquiry is, if he is, by the Constitution and laws of the country, clothed with power to defend the nation against an aggressive war waged for its extermination by internal enemies; and, if so, what public condition in relation to the belligerents and neutral powers results from such warfare.

Much stress has been laid, in the progress of the argument, on the want of an open declaration of war by the President previous to his adopting and employing forcible means to repel or counteract warlike measures of an enemy persisting in hostile attacks on the government and its property.

No one can claim, as a right, that a public declaration of war shall be promulgated, unless it be the nation by whose government it is made, and then it serves only as a notice to their own citizens and subjects. The declaration by manifestoes, heralds or nuncios, does not constitute war, and the omission of the declaration can in no way impair its justness or efficacy, especially in a case of defensive war. (1 Kent's Comm., 51, 54; Wheat. on Captures, 13, 15; The Eliza Ann, 1 Dods., 247; Duponceau on War, chs. 1, 2.)

A civil war of alarming proportions was waged with extraordinary forces and activity. To promote the public defence, and impair the resources of the enemy, the President proclaimed the blockade of the ports referred to in the pleadings and proofs before the court. If the competency of a foreign government to question, in a prize court, the power of a belligerent to institute a blockade be conceded, or to do more than exact a strict observance of public law in maintaining and enforcing such blockade by the belligerent who imposes it, I am not

convinced by the proofs or arguments adduced in opposition, in the cases on trial, that the lawfulness or efficiency of the blockades established has been impeached. I hold that in time of civil war and of insurrection and rebellion, the nation, assailed and attacked by hostile and rebel forces, may as rightfully resist war levied against itself, by closing, embargoing, or blockading ports held by its enemies, as a means of war calculated to weaken and defeat hostile operations to its detriment, as it may accomplish the end by direct force and superior power; and that no sound distinction exists whether such defensive proceedings are employed in civil, internal, or domestic warfare, or in war between nations foreign to each other. Under the law of nations, the rights, incident to a war waged by a government to subdue an insurrection or revolt of its own subjects or citizens, are the same, in regard to neutral powers, as if the hostilities were carried on between independent nations, and apply equally in captures of property for municipal offences or as prize of war. (*Rose v. Himely*, 4 Cranch, 241; *S. C. in Circuit Court, Id.*, Appendix 509; *Hudson v. Guestier*, 4 *Id.*, 293; *The Santissima Trinidad*, 7 Wheat., 306.)

Commercial ports may, in time of war, through neutral trade, become efficacious allies to a belligerent power having the control or use of them. So far as that aid avails the enemy, it is warlike in its nature, and may be repelled by war means. Blockade is the measure recognized by the law of nations as the appropriate remedy, and that is, in character and operation, peaceful as to neutrals, and only warlike in respect to the enemy against whom it is imposed. The President, as commander-in-chief of the army and navy, is the functionary under our government who has, as incident to his office, the power and right to exercise the resisting and repelling means of legitimate warfare whenever the exigencies of the case require them. And it is not to be overlooked, that in selecting the method of restraining the commerce of neutrals with a besieged or beleaguered port, the milder means of blockade is more favorable to them than a peremptory exclusion of their trade by closing the port absolutely.

It certainly can be of no consequence whether the ports blockaded belonged technically or in reality to the United States, or were the property of individuals innocent of any warlike purposes against the United States, or of aiding its enemies. It is sufficient if the evidence shows the ports to be under the power and use of enemies of the United States. This use may be an usurped one, and in wrong of the actual proprietary authority of the places. The right of the United

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States to prevent such use being turned to their prejudice, rests not at all upon the character of the true ownership and rightful authority over the places, but on that of their employment by the occupants. Whilst so held by an enemy, they become foreign territory. (*The United States v. Rice*, 4 Wheat., 246.) This consideration meets, also, another ground of defence earnestly urged on the part of the claimants, that these various ports which are subjected to blockade are portions of States of the Union, and, as such, a portion of the Union itself, and cannot, therefore, be made, territorially, objects of hostile control, but only of municipal regulation and government; nor that, more eminently, can they become, as countries or people, enemies of the government of which they are constituent parts, because in that relation they also hold an independent sovereignty as States, which cannot be infringed or molested by authority of the United States acting directly upon that independency.

The Union is not composed of subtleties and abstractions. It was formed with the purpose to render it practical and efficacious. The old Confederation was abrogated, and a new form of government was created in substitution of it, with a view to free it from the infirmity and vice of leaving its existence in dependence upon the absolute will of the separate sovereignties from which it was composed. It is not to be supposed that the people would perpetuate that prominent infirmity of the old Confederation which embarrassed and enfeebled every action of the Revolution, by the interposition of State distrusting and inactions in opposition to the common weal. The manifest purpose of the people, acting through their national representatives in convention, was to constitute and perpetuate a government of national powers, subsisting within itself, and it is not to be implied that there would be retained, in such reconstruction, the very evil of separate sovereignties in the several States, which had prevented and defeated all practical utility in the system then existing, and which, accordingly, was to be abrogated by the Constitution. The notion of a government constructed of numerous parts, each part separate and sovereign in itself, and also sovereign against the whole, was never adopted or declared by the founders of the Constitution, and probably was not contemplated or comprehended at that day.

The officers of the United States government act within particular States to enforce or defend the laws of the United States, the same as if no State demarcation existed. The whole extent of the country is one nation and one government. In respect to the United States



and its constitutional laws, there are no State lines, and State sovereignty is a nonentity. (*McCulloch v. The State of Maryland*, 4 Wheat., 400.)

The denominations of States existing for local and domestic purposes are made use of and applied by the insurgents in the present war in designation of combinations of persons, disrupted, so far as they had material or political power so to become, from their citizenship of and subjection to the government of the United States, in disavowal and defiance of allegiance thereto, and who, so far as their own purposes and acts can fix their political *status*, make themselves as alien and foreign from the United States government as if they assumed the name of citizens and subjects of any state of Mexico or of South America.

They thus make themselves avowed enemies, and wage war against the United States, to accomplish its dismemberment and destruction. It can be of no consequence under what name or appellation those enemies unite and act—whether as States, secessionists, southerners, or slaveholders. They are, in every just contemplation of our system of government, insurgents and rebels against a common government, waging war for its overthrow.

The organism of States, which furnishes a form of government for peaceful and domestic purposes, is thus sought to be perverted by the insurgents into alien sovereignties, which may exercise, under the familiar name of States, independent and co-equal capacities with the national government. Such names or pretensions can have no effect to change the intrinsic nature of things, and transform the residents of particular States into anything else than citizens and subjects of the United States, and, as such, subordinate to its Constitution and laws. (*Luther v. Borden*, 7 How., 1 )

But, by the instrumentality of these pretences and other means employed, the insurrection has become developed into a hostile power of great magnitude and force, disavowing all unity with, or subordination to, the mother country, and taking to itself the attributes of a distinct nationality. It thus discards all common obligations under the federal government, and, by force of arms, wages war to establish one overpowering that of the parent nation. The insurrectionists become enemies of the United States government by open hostilities waged against it, without losing their subjection to it individually as citizens. Government represses their rebellion and treason legitimately by force of arms and war, because the magnitude and force of the revolt is beyond

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the control of the law and the civil magistracy. To that end all the constitutional powers of the President, in his capacity of commander-in-chief of the army and navy, may be rightfully called into exercise. The insurgents confront the government in masses of armed men holding fortified posts or ports of trade and general commerce, and they thus become belligerents and enemies of the nation, against whom all the means of war allowed by the law of nations may be rightfully employed, as was held by the Supreme Court in the case of the *St. Domingo* insurgents. (*Rose vs. Himely*, 4 Cranch, 241.) For the reasons hereafter suggested, I forbear adding further support to this view, by citation of authorities, than a reference to a very few fundamental points, taken generally from decisions in our own courts.

In my judgment, every branch of the general defences set up against these suits is inadequate and insufficient, in law and fact, to bar the prosecutions pending. I consider that the outbreak in particular States, as also in the confederated States, was an open and flagrant civil war, waged against the United States by the insurgents in the several disaffected States referred to in the pleadings and proofs in these several causes, at the time the several proclamations, also referred to and named, were issued and made by the President; (*Wheaton's International Law*, pp. 57 to 60; *Id.*, 343, § 7; *Vattel*, book 3, ch. 18, § 292;) that such insurrection was maintained by warlike means and forces too powerful to be overcome or restrained by the civil authority of the government; that it was a state of war, and the government could rightfully resort to the rights and usages of war to maintain itself and defeat the opposition; (*Luther v. Borden*, 7 How., 45;) that it became lawful and necessary to resist and repel hostilities so levied against the United States and its laws, by aid of the army and navy of the United States; that the President possessed full competency, under the Constitution of the United States and the existing laws of Congress, to call into service and employ the land and naval forces of the United States in the manner they were used by him, for the purpose of maintaining the peace and integrity of the Union, and putting down hostilities waged against it; and that the President had, rightly, power to establish blockades of ports held by those enemies, and to enforce such blockades pursuant to the law of nations. (1 *Kent's Comm.*, 144.)

It is strenuously insisted that, under the proclamation of the President, a vessel is not subject to capture for violation of a blockade unless there has been a previous warning indorsed on her regis-

ter by a commander of a blockading vessel at the port whose blockade she attempts to violate, and she shall afterwards attempt to enter or leave the same blockaded port. In my opinion, the provision in the President's proclamation of April 19, 1861, referred to on the argument, is not to be construed as a condition absolute, governing all instances of an effort by neutrals to break a blockade, but imports that the vessel so to be warned must have been arrested in innocently attempting to do the forbidden act, and will not apply in cases where a vessel has, at the time of capture, perfected the prohibited attempt by effecting an entrance into or escape from a blockaded port undetected until the unlawful purpose has been accomplished. The universality and justness of the rule of the law of nations, that the breach of a blockade, with knowledge or notice of its existence, subjects the property so employed to confiscation, is stated by Lord Stowell, and commended with great force and emphasis in the case of *The Columbia*, an American vessel, (1 Ch. Rob., 154.) He says that, "among all the contradictory positions that have been advanced on the law of nations, this principle has never been disputed. It is to be found in all books of law, and in all treaties; every man knows it; the subjects of all states know it, as it is universally acknowledged by all governments who possess any degree of civil knowledge." (1 Kent's Comm., 144; Halleck's Int. Law, ch. 20, secs. 16 to 24; 2 Wildman's Int. Law, ch. 4.) The common rule of the law of nations will, accordingly, be deemed to prevail, when not expressly abrogated by treaty or edict of the power seeking to enforce it.

Citizens of the United States levying war against the United States are enemies of the government, notwithstanding their residence within the Union; and the property possessed and held by them thus becomes property of the enemies of the government, subject to confiscation when arrested at sea; and persons continuing within the authority and dominion of such enemies are clothed with the character and responsibilities of enemies, because of their residence, without regard to their private sentiments, or the territorial locality of the place of their hostility. (1 Kent's Comm., 74, 76; *The Chester v. The Experiment*, 2 Dallas, 41; *Jecker v. Montgomery*, 18 How., 112.)

Contemporaneously with the institution of these suits, a trial was had, and a condemnation made in the admiralty court, sitting within the District of Columbia, of the British schooner *Tropic Wind*, captured as prize of war, for violating a blockade of the ports of Virginia, proclaimed by the President, and on that hearing judgment was rendered by the court, confiscating the vessel and cargo for that cause.

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On the 23d of July last, in a suit pending in the district court for the eastern district of Pennsylvania against the ship General Parkhill, seized as prize for a breach of the blockade of the port of Charleston, and also as being the property of residents of Charleston, enemies of the United States, the ship and cargo were, for the latter cause, condemned and confiscated by the court.

In one or the other of those two actions the general defences relied upon before this court, in the classes of suits now on hearing, were, in effect, set up by the claimants, and were there considered and decided. Those courts exercise co-ordinate authority with this court over the subject-matters of the respective suits, and the causes decided are subject to review by a like course of procedure, and before the same ultimate tribunals. It would accordingly comport with the stability and influence of judicial proceedings, in case the decisions already made on these main points are not palpably erroneous in point of law or fact, to avoid a conflict of adjudication between courts of co-ordinate jurisdiction, on propositions of law or fact substantially the same, and whilst all the adjudications are open to review in the same tribunal, where a decision may be speedy and must be final.

I did not have the advantage of reading an official report of the decision in the case tried at Washington, on the hearing of these causes. I have since obtained a newspaper copy of it, which, I presume, is substantially correct. The learned judge of the eastern district of Pennsylvania has favored me with a copy of his opinion rendered since these causes were argued in this court.

The preceding statements evince that the three courts coincide essentially in their determination of all the points made by the respective parties, which are of common import and bearing.

Those learned courts, in the decisions rendered on the main questions raised there, and coinciding with those passed upon in this court, supported and vindicated the conclusions adopted by them, with an amplitude of research and argument I could not hope to strengthen, and which I can perceive no occasion to reiterate or attempt to re-enforce. I have perused those manifestations of judicial diligence and learning with great gratification and instruction, and hope the varied learning displayed in those judgments may be invoked to the support of the conclusions I have adopted in the cases before me, with no less efficacy than if they had been recapitulated specifically in the body of this decision. I have, for that reason, studiously omitted to cite the numerous quotations made on the argument of these cases by th

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respective counsel, or collected by my own reading, and, in preference to that course, leave the points on which the three courts concur in their opinions to the very adequate and satisfactory support of the authorities of the books, so abundantly produced in the judgments of the other courts.

After this preliminary survey of the principles supposed to lie at the foundation of all these suits, and to bar their prosecution in favor of the libellants, it will be necessary to look into the specific proofs to ascertain whether the property seized is condemnable, because of its being shown to be prize of war, under the evidence and law governing these prosecutions.

Taking up the cases in the order in which they were brought to hearing in court, it appears that the bark Hiawatha, was captured, on or about the 20th of May last, by the United States flag-ship, in Hampton roads, as prize of war, for an alleged violation of the blockade of the port of Richmond, Virginia, and, on the 27th day of May, 1861, was duly libelled in this court for condemnation as prize, and that various parties appeared and filed in court claims, answers and exceptions to the libel, on the 18th of June thereafter. The pleadings interposed by the respective parties were, in substance, as follows: The libel; the claim and answer of the British consul, in behalf of the owners of the vessel and a portion of the cargo; the answer and claim of Robert Colgate & Co., agents of Frederick Parbury & Co., English merchants, for other portions of the cargo; also, the claim and answer of Dubois & Vandervoort, agents of British and foreign owners of part of the cargo; also, the claim and answer of J. A. & T. A. Patterson, agents of British owners of other portions of the cargo; also, the claim and answer of Miller, Mossman & Potts, British owners of the vessel; and, also, the claim and answer of Schuyler & Livingston, agents of O'Brien & O'Connor, British subjects, and part owners of other portions of the cargo; all containing substantially the same matters of defence as the one filed by the British consul, above alluded to. All the foregoing claims and answers deny, in substance, the legality of the blockade of the port of Richmond, knowledge by the claimants of its violation, and the authority of the master of the vessel to prejudice the rights of the claimants by any unlawful act on his part.

The facts appearing from the documentary proofs and the answers to the preparatory interrogatories establish the following case:

The Hiawatha sailed from England, despatched and laden by British owners, for City Point, in the port of Richmond, Virginia, with

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a cargo of salt, and to bring back a cargo of cotton and tobacco from that port, on freight. She was regularly documented as a British vessel, and was commanded and manned by British subjects. She entered the port of Richmond, and arrived at City Point, in that port, on the James river, about sixty miles below the city of Richmond, on the 29th of April. The proclamation of the President, of April 27, announced that an efficient blockade of the ports of Virginia and North Carolina would be established; and the proclamation of Commodore Pendergrast, of April 30, in command of the Virginia station, gave notice that he had a sufficient naval force there for the purpose of carrying out that proclamation.

The documentary proof put in evidence by both parties, in connexion with that already referred to, will bring into distinct view the facts in relation to the blockade of the State of Virginia, now under particular consideration.

The letter of Lord Lyons to Lord John Russell, dated Washington, May 2, 1861, with its enclosures; that of Lord Lyons to Lord John Russell, dated May 4, 1861, and that of Lord Lyons to Lord John Russell, dated May 11, 1861, with its twenty enclosures, will explain the posture in which the case of the Hiawatha stood at the time of her egress from the blockaded port of Richmond or City Point.

The fifth count of the libel alleges that at the time of her seizure the Hiawatha was attempting to leave the port of Richmond, and to violate, and was violating, the blockade of such port and the proclamation by which it was established, having notice of such blockade. The vessel had passed from that port to the port of Hampton at the time of capture. (1 U. S. Stat. at Large, 634, sec. 11.)

The owners of the bark plead to the libel at large various allegations, some excusatory of the conduct of the vessel in that port, some legal and others diplomatic in character; and, in regard to this particular charge, they deny that the port was under a legal blockade at the time of the seizure of the vessel, and also deny that she violated or was attempting to violate a blockade at the time, or that other evidence of blockade is admissible than a notice indorsed on the register.

Numerous other parties, representing the cargo and other interests connected with the voyage, appear as claimants in the cause, and, in substance, take issue upon the charge of a breach of the blockade, as alleged, and also upon the validity of the blockade.

The master of the bark, and J. Potts, a part owner, each in his an-

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swer to the preparatory interrogatories, denies personal knowledge or notice of the blockade prior to the capture, or that the owners of the vessel had notice thereof; but the master, in his private journal, kept and found on board the bark, under dates of the 14th, 15th and 16th of May, notes his presence in Richmond and Petersburg on those days, and that he passed a night or more at a public hotel in one of those cities. Letters from persons concerned in freighting and despatching the vessel at City Point, found on board of her, speak of the blockade as severe, and known at the port where she was laden and made sail.

The certificate of George Moore, British consul for the State of Virginia, appended to the ship's register, manifest and bills of lading, bearing date the 15th of May, 1861, is clear evidence that the master of this vessel, and others interested in British trade, had notice of the blockade of the ports of Virginia as early as the 11th of May, and that it would be enforced. The consul supposed fifteen days would be allowed for the despatch of vessels, and that this time would begin from the 2d of May; but he does not assert any authority for naming that as the true day when the period of limitation was to commence. The evidence shows ample notice of the period of delay, to put all interested on inquiry, and they must be held to assume the risk of making a correct computation of the time. It must be presumed, from the knowledge of the blockade by the British minister, Lord Lyons, and by Consul Moore, resident at Richmond, acquired prior to the 4th of May, that the master of the vessel, and all the shippers of cargo at that place, had received direct notice of the blockade, through their agency, as well as from general notoriety, on or before the 11th of May, and that the master commenced lading his ship on that day, in consequence of such knowledge, with a hope to leave the port within the fifteen days limited.

The inquiry is not pursued further into the details of the proofs on this head, because, from the indubitable rule of law prevailing in the English prize courts, a notice of blockade to the officials of a neutral government is sufficient to the subjects of the neutral nation. Lord Stowell says: "A neutral master can never be heard to aver, against a notification of blockade," to his own government, "that he is ignorant of it." (*The Neptunus*, 2 Ch. Rob., 113.) Again he says, that a public declaration is not necessary to constitute notice of it; and that if the individual concerned is personally informed of the fact, the purpose of notice is still better obtained than by a public declaration.

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(The Mercurius, 1 Ch. Rob., 83.) And such is the American rule. (1 Kent's Comm., 147; Wheaton on Captures, 193 to 199.)

In this instance every particular necessary to constitute a specific notification of the blockade to the ship, excepting serving it personally on her master or owners, concurred to fix the presumption that full knowledge of the fact was possessed by her master and one of her owners before acts were entered upon by her in violation of it. The resident minister of the neutral government had official notice; the consul of the nation residing at the blockaded port apprised Lord Lyons on the 5th of May that he had cautioned persons in Richmond, there representing the owners of the ship, against her having the right of egress at that time, except in ballast, but they would not consent to her so going; and, on that evidence, it aggravates the force of the presumption against the integrity of the master and part owner there present for them to deny any notice of the blockade. The warning, if indorsed on the register, would only be evidence in protection if the vessel should be again arrested for the attempt made prior to the date of the warning, and would be evidence for her conviction should the effort be renewed afterwards. There is no ground, in national law or the reason of the thing, for claiming that a neutral vessel may commit the warlike act of violating wilfully a legal blockade if not found carrying on her register a written warning against so doing.

The act of egress is as culpable as the act of ingress, when done in fraud of the blockade. (The Frederick Molke, 1 Ch. Rob., 86; the Vrouw Judith, Id., 151; The Neptunus, Id., 171.) Chancellor Kent approves the doctrine of Sir William Scott in these cases, and confirms the reason of it, because, he says, the object of the blockade is not merely to prevent the importation of supplies, but to prevent export as well as import, and to cut off all communication of commerce with the blockaded port. (1 Kent's Comm., 146.) On notice that the port of Richmond was under blockade, the Hiawatha, being a neutral vessel, had a right to withdraw, with all the cargo then honestly laden on board, but she could not have a right to add to her cargo after notification or knowledge of the blockade. The British authorities are strict to this point, and the American decisions accord with them, that the privilege of the neutral vessel to leave a port blockaded after her entry is limited to the vessel itself, and her cargo *bona fide* purchased and laden on board before the commencement of the blockade. (1 Kent's Comm., 146; The Comet, Edwards, 32; Olivia v. The Union Ins. Co., 3 Wheat., 194.)



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The acts of the master of the vessel in breach of the blockade will affect the cargo equally with the vessel, if the cargo is laden on board after the blockade has become effective as to the vessel. Sir William Scott in the *Vrouw Judith*, (1 Ch. Rob., 151,) the *Frederick Molke*, (Id., 88,) and the *Betsey*, (Id., 94,) declared the rule to be, that a neutral cannot export cargo from a blockaded port, taken on board after knowledge of the blockade. The breach of blockade by the ship will equally affect the cargo on board, unless there be clear proof of the innocency of the cargo, and that it was neutral property at the time the blockade was established. The evidence of that fact is not satisfactory in this case, as to any portion of the cargo, and a strong suspicion rests upon some part of it, that it is enemy property. The whole cargo (cotton and tobacco) being the product of the enemy's country, the evidence should have been made free of doubt by the claimant, that it was shipped before notice of the blockade, or further proof should have been prayed for and introduced to that point. The want of such proof would seem to have prevented the discharge of the vessel by the government, at the instance of the British minister, after her arrest. But, further, in my opinion, the manner of the employment of the ship on this voyage renders the master the agent of the cargo also, on the shipment on the home voyage.

No cargo was laden on the vessel here until the afternoon of the 11th of May, subsequent to the effort of Lord Lyons to obtain from Mr. Seward a relaxation of the limitation of the time of departure with respect to the *Hiawatha*. That was a point within the scope of diplomatic arrangement, but the accommodation sought for this vessel, both as to her lading and time of departure, in the letter of Lord Lyons to Mr. Seward, of the 9th of May, and the reply thereto, make no mention of a privilege granted her by this government to ship cargo after she received notice of the blockade, and the privilege solicited does not seem to have been accorded by Mr. Seward; and, accordingly, the vessel, if she had taken her departure within the period of fifteen days from the establishment of the blockade, would not have been entitled to export the cargo taken on board after knowledge of the blockade, (*The Exchange*, Edw. R., 43; *Wheat. Elements*, 548; *The United States v. Guillem*, 11 How., 62,) without clear proof that the act was honest and fair as to the belligerent rights of the captors.

Upon the proofs the vessel herself did not commence her outward voyage until the 16th of May, if unloosing her fasts in port be deemed the commencement of the voyage, and she is, accordingly, outside of

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the fifteen days' term of indulgence. When captured, she had left the port of Richmond and violated the blockade there existing. Her relief is to be pursued, as it was commenced, through equitable considerations addressed to the government, and not upon a legal defence against the suit in the prize court.

I accordingly pronounce for the condemnation of the vessel and cargo, because of a violation of the blockade in question.

A point was made and fully discussed, in the course of the trial, as to portions of the cargo being enemy property at the time of seizure. No judgment is given upon that branch of the case. Although it is proper to observe that evidence arises out of the correspondence of laders of portions of the cargo, and other papers connected with the proposed voyage, found on the vessel, as, also, out of circumstances connected with the transaction, which tends to countenance the surmise, that measures governing the preparation and shipment were on foot with intent to cover and protect a portion of enemy's interests in the goods laden on board, yet these proofs but imperfectly make out probable cause, or just ground of suspicion, that the fact was so. It is considered more advisable to dispose, on this hearing, of the broader and more important issues springing out of the blockade declared, and the liabilities and rights of neutrals under those questions. Should the judgment of this court be affirmed by the higher tribunals, there will be no occasion to litigate the subject further; and, should this decree be reversed, the cause will undoubtedly be sent down from the courts of appeal, with instructions which may probably bring out more distinctly than the present shape of the pleadings and proofs seems to have done, the immunities and rights of the neutral owner or carrier in respect to the goods of an enemy laden on neutral bottoms and for neutral ports, together with the corresponding privileges and responsibilities of captors.

I consider that the proofs in the case afford a violent presumption that both the master and the part owner of the vessel, sailing with her, had direct and positive notice of the blockade before they commenced taking cargo aboard, and that they afterwards proceeded to lade and despatch the vessel, with intent to evade its operation. I do not regard a warning in writing, indorsed on the register of the vessel, to be necessary to establish notice of the blockade, when actual notice to the master or owner is satisfactorily made out otherwise. (The Columbia, 1 Ch. Rob., 156.) Besides, this vessel was already out of the blockaded port, on her voyage to her port of destination, and

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*The Pioneer.*

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turning her away, as it is argued should have been done, with such indorsement, would only be to authorize her to complete the purpose for which she violated the blockade.

Sentence of condemnation of the vessel and cargo for a violation of the blockade will be entered.\*

The case of the bark *Pioneer* was the second one brought to hearing.

The libel charges, in substance, that the bark, with the cargo laden on board, was, on the 20th of May, 1861, seized by the United States steamship *Quaker City*, under command of Acting Master T. W. Matthews, as prize of war, for violating the blockade of the port of Richmond, and also, for that the bark, at the time of such seizure, together with the cargo on board, was owned by insurgents and traitors, and public enemies of, and persons engaged in actual hostilities against, the government of the United States, whereby the vessel, with the cargo laden therein, became liable to confiscation and condemnation, as lawful prize.

The claim and answer, put in under a test oath by the master, in behalf of her owners, residents in Richmond, Virginia, denies the violation of the blockade alleged, admits the ownership of the vessel and cargo by the claimants, and that they are residents in Richmond, denies that the vessel or cargo thereby became subject to forfeiture, and denies, in effect, the fact of blockade, as also the authority of the President to establish it; and, with the exceptive allegations thereto attached, the pleadings take the general objections, in bar of the suit, which are set up and have been considered and disposed of by the court, as is above stated, in the decision applicable to the defences common to the nine other suits heard concurrently with this one at the present sitting of the court.

The claim of forfeiture against this vessel and cargo, because of a violation of blockade, is not pressed by the counsel for the United States, and the only charge on which the condemnation is urged is that both are enemy's property.

It appears, upon the preparatory proofs—and that evidence is uncontradicted—that the capture of the vessel and cargo was made on the high seas, outside of any harbor of the United States.

It being admitted, in the claim and answer, that the claimants were, at the time of the capture, resident citizens of Virginia, and the documentary proofs showing a state of war to have existed at the time be-

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\* The decree in this case was affirmed by the circuit court, on appeal, November 20, 1861. The decree of the circuit court was affirmed, on appeal, by the Supreme Court. (2 Black, 635, 678.)

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The Crenshaw.

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tween the United States and the place of residence of the claimants, or that part of the State of Virginia then under the power and control of the public authorities of Virginia, who assumed to act and were not prohibited or restrained from so acting, by the residents therein, in the name and by the authorization, at least, of that particular section and portion of the State, the citizens and residents thereof are parties, in judgment of law, to the acts of their local government, in its hostilities; and a war between the conflicting powers is a war between all the individuals of the one and all the individuals of which the other belligerent power is composed. The inclinations of individuals, in relation to other States, are to be considered as bound by the acts of their government.

The doctrine is strongly and clearly stated by Chancellor Kent, (1 Kent's Comm., 75; Wheat. on Captures, 40, 41, 102,) and excludes the claim of exemption relied on by the owners in this suit. Holding, as the decision of the court does, on these cardinal features of the defences to these actions, that the United States are armed, in judgment of law, in meeting the civil war waged upon them, with the same rights and privileges they could claim, in respect to the property or exemptions of their enemies, if the war was one between nations independent of each other it follows that the vessel and cargo proceeded against in this case, belonging to enemies of the United States, and captured at sea, are subject to confiscation to the United States.

It is, therefore, ordered and decreed by the court, that the property arrested and proceeded against in this suit be pronounced prize of war, and be condemned, sold, and distributed as such, according to the rules and law of the court in that behalf.\*

After the consideration of some intermediary points, arising in the case of the ship North Carolina, the suit against the schooner Crenshaw was the next one brought to hearing. The shape of proceedings in this cause coincided essentially with that employed in the other suits heard concurrently with it, and the preliminary documentary proofs were the same.

The libel, in this instance, charges that the schooner Crenshaw, and the cargo laden on board of her, were, on the 17th day of May, 1861, seized in Hampton roads by the United States ship Minnesota, under the command of Flag Officer S. H. Stringham, acting under the proc-

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\* The decree in this case was affirmed by the circuit court on appeal, July 17, 1863. Afterwards, further proofs were, on leave, put in by the claimants, in the circuit court, and on a further hearing the decree of the district court was again affirmed by the circuit court, November 25, 1863.

lamation and instructions of the President, and that, at the time of the seizure, the schooner was attempting to leave the port of Richmond, then being under blockade, and to violate such blockade, and thus became, with her cargo, subject to confiscation. The libel also charges that the vessel and cargo were, at the time, owned by residents of the State of Virginia, and enemies of the United States, and thus became lawful prize.

Answers and claims were filed on the part of Charles H. Pierson, of New York, master of the vessel, as agent and carrier, on behalf of the owners of the vessel and cargo, of Richmond, Virginia; of Richard Irvin, Alexander Proudfit, James S. Wetmore, and Alexander P. Irvin, on behalf of themselves and James A. Scott and Maxwell T. Clarke, all citizens of the United States, and the two last named residents of Richmond, Virginia, to thirty tierces of tobacco strips, part of the cargo; and of Laurie, Son & Co., of Scotland, British subjects, to ninety-one hogsheads and thirty-nine half hogsheads of tobacco, part of said cargo; and of Henry Ludlum, a citizen and resident of Newport, Rhode Island, and G. F. Watson, now in Virginia, both doing business lately at Richmond, in said State, under the style of Ludlum & Watson, and the said Ludlum also doing business in the city of New York, with Gustav Heineken, under the style of Ludlum & Heineken, and the partners composing the firm of Charles Lear & Son, of Liverpool, England, through the said Ludlum & Heineken, intervening, as their agents, claiming ten hogsheads of tobacco strips, part of said cargo of said schooner; and also of John Caskie and James H. Caskie, owners of one hundred and eight hogsheads and forty-seven half hogsheads of tobacco, part of the cargo of said vessel. These claimants do not aver that they are not citizens and residents of Richmond, in the State of Virginia, nor do they aver that they are the subjects of any neutral government.

This cause is one of the three upon which the merits of the defences to the captures of the ten vessels as prize, all on trial together, were investigated and debated upon points embracing all the grounds upon which the seizures are maintained by the government, and resisted on the part of the claimants.

No party intervenes directly, as owner of the vessel, to defend her against the arrest. Her master interposes a claim to her, as agent and carrier of the vessel and cargo. This is not a very apt description of a master's relationship to a vessel, and has no apparent pertinency or application to the cargo, as all parts of that are specifically claimed by its respective proprietors.

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The Orenshaw.

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The answers to the preparatory interrogatories and the ship's papers found on board show conclusively that the vessel was owned and controlled by residents in Richmond, Virginia; and one branch of the defence interposed to the prosecution is, that they, being also citizens of the United States, cannot, because of that residence, be enemies of the United States. The vessel was registered in the names of the respective owners, as residents of Richmond, the 17th of April, 1861, and a clearance was given at the same place by the confederated States, May 14, 1861.

That topic was considered by the court and disposed of in the decision previously rendered on the general subject of the immunities so set up, and which applies fully to the condition of this vessel, and to so much of her cargo as is proved to belong to enemies of the United States of that class and description.

All of the cargo, not being enemy's property, which was not shipped with intent to evade the blockade then established at the port of Richmond, or was not placed under the charge of the master in such manner as to render him in law the agent of its owner, in attempting to evade the blockade, is entitled to be freed from the arrest and restored to the honest owners, neutrals or residents within loyal States of the Union.

The evidence furnished from the interrogatories *in preparatorio*, the test oaths and the shipping papers, is relied upon as proving that the cargo was honestly the property of neutrals or loyal citizens of the United States, resident out of any State in insurrection and rebellion, and in a state of war against the government.

Considering the proofs in the order in which the claims have been interposed, the first one is the claim to thirty tierces of tobacco strips, by Irvin & Co., in their own behalf and that of Scott & Clarke.

The allegations of the libel are, that the cargo of the vessel is subject to condemnation as prize of war, both because it belonged to enemies of the United States, and because of its exportation in violation of the blockade subsisting against the port at the time of its departure, of which the claimants had notice and knowledge.

The claim filed by the claimants alleges that all the claimants are citizens of the United States, and that Scott and Clarke are residing in Richmond, Virginia, and asserts that the other claimants are residents in New York. No proofs were given of these facts, but they were acquiesced in as true by counsel on both sides. It was not denied that the claimants had a partnership interest in the cargo pur-

chased and shipped on their account, but it was insisted they were no more than payers of the consideration or purchase price, and that there was no partition of the same, the whole property belonging to the claimants, and that the Richmond parties or co-proprietors obtained no property until after adjustment of the transaction, and that accordingly there was nothing seizable in the case at the time of the arrest.

The interests of the claimants, described in the claim, became common and perfected from the incipency to the termination of the adventure. Scott & Clarke, residents in Virginia, were the purchasers of the property, and the shippers of it from the place of purchase to agents in England. The other members of the concern, residents in New York, were to collect and realize the products of the consignment, and, after the charges of the transaction were adjusted, the net proceeds were to be shared between the two branches of the association, one in Richmond and the other in New York. There was no contingency or reservation which prevented the contract from being a completed one of purchase and sale, except a possible right of stoppage *in transitu*, in case the consideration money should be unpaid.

It is to be implied from the statement in the answer or claim that the property passed directly, on its sale by the vendors in Richmond, to the claimants, the actual vendees; and more particularly so, as, by the bill of lading, it was consigned to their common agents in England, to be sold for their mutual advantage. This would constitute a joint ownership of the tobacco in all the claimants. There would thus clearly be a right of property in Scott & Clarke in their share of this shipment at the time of its capture, the value or amount in money only remaining to be ascertained by actual sale in market abroad. This was then a joint property in the copartners, their shares in which were not exempt from condemnation, because of its partnership character. (The Franklin, 6 Ch. Rob., 127.) The court would admit further proof in behalf of the other parties, copartners, to discriminate their shares of the joint partnership, and allow them to seek its restoration on that ground, were they neutral copartners and entitled to hold commercial intercourse with the enemy's port for the purpose of acquiring property anew by such dealings, or to withdraw property of their own, then being within the power of the hostile country. But citizens and subjects of the capturing nation are interdicted all trade or dealing with the enemy or at his ports for any purpose or object in time of war. (Wheat. on Captures, ch. 7.) The tobacco purchased by the claimants and claimed in this case was bought by the

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The Orenshaw.

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claimants from the enemy after the commencement of the war. It was produced from the soil of the place of exportation. That impressed most distinctively upon the property a hostile character, independent of the place of residence of its vendor or purchasers. (1 Kent's Comm., 73; Wheat. on Captures, ch. 7.) Not only is property taken trading with the enemy liable to forfeiture, but it is subject to forfeiture as prize of war. (Wheat. on Captures, 219.) Moreover, the seizure of this property was on the sea, after it had left its port of departure in an enemy's bottom. There is not, therefore, upon the facts of this case, any legal vindication of a right to this property established on the part of any of the claimants before the court, nor, on the rule adjudged to govern this case—that a lawful war of defence was subsisting at the time of capture on the part of the United States against the insurgents or citizens of Virginia—have the claimants, or either of them, a capacity to controvert the rightful seizure and condemnation of this property.

If Samuel Irvin and Peter Forbes, of Liverpool, England, composing there the firm of Samuel Irvin & Co., have any other or further interest or property in this transaction, pleaded in the defence of this suit, than that of brokers or agents between or in behalf of the parties before named, resident in Richmond and New York, who procured this property in Richmond to be consigned to Liverpool under the arrangements set forth, those Liverpool parties have not intervened in this suit and brought their rights and equities before the court. They are neutrals, and, if litigant parties in the cause, would have a right to raise the question of the validity of the blockade alleged in the libel, and demand the judgment of the court upon that point. That matter, in respect to others of the claimants, was so blended with the particular issues in this action, that the court was necessarily compelled to hear and investigate the subject; but the direct right between the libellants and these individual claimants does not, upon the issues, demand or authorize the court to adjudge the validity or invalidity of the blockade declared against the ports of Virginia.

Upon the issue it is found by the court that the thirty hogsheads of tobacco strips, charged in the libel to be forfeited, as prize of war, and claimed in this suit by the claimants, were, at the time of seizure, wholly the property of the enemy, and lawful prize of war, and a decree of condemnation and sale is to be rendered against the same.

The case, however, having been fully discussed on both issues, the magnitude of the questions and property involved in this suit renders



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The Crenshaw.

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it expedient to so dispose of both branches of the controversy that the parties concerned may have the opportunity, in a court of appeal, for a revision of the judgment of this court. I add to the determination above announced the further decision, that, in my opinion, if either of these parties claimants shall be afterwards adjudged competent to litigate the lawfulness and sufficiency of the blockade and the question of its violation, there is adequate evidence of its intentional violation by the claimants after notice of its establishment.

In addition to the documentary proofs previously adverted to, the domicile of these claimants and their personal relations to the voyage and cargo, supply circumstances amounting to presumptions of high force, that they knew that the port was in a state of blockade immediately on the proclamation of the fact by Commodore Pendergrast on the 30th of April last.

The vessel sailed from New York for Richmond April 19, passed Old Point Comfort the next day, and entered James river the 21st, and arrived in Richmond the 23d of April, as appears by the log of the vessel. On the 27th of April she finished unlading her cargo, and then, as appears by the log, lay idle in port, employed only on small and occasional jobs in cleaning, painting, or putting the vessel in order, until May 13, when the entry in the log is in these terms: "At 12 m. orders came down to load for Liverpool, England. At 1 p. m. commenced loading with a cargo of tobacco, working until 10 p. m." On May 14 the entry is: "All hands employed at loading; continued work until 1.30 a. m. next morning, as we had no time to spare, [—blank—] which took effect on all vessels clearing after the 15th of May." On the 15th the vessel "finished loading at 10 a. m., and hauled down through the locks, and at 7 p. m. started down the river."

Even if this leaving the locks to proceed down the river were to be regarded as an egress from the port, it was not within fifteen days from the 30th of April. It is obvious that implicit confidence cannot be reposed in this period being the real time of getting the vessel under way, from the paper representation of the commencement of the voyage, as the manifest and clearance were passed at the confederate custom-house on the 14th of May, before the cargo was taken in, according to the log, and because the log further shows that the vessel had to anchor at Day's Point the night of the 16th, and be searched by public officers, before she was allowed to depart from the port.

Manifestly the answers of the master and mate to the preparatory

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The Orenshaw.

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interrogatories are reserved and disingenuous as to the fact of notice or knowledge with them of the existence of the blockade before the vessel commenced taking in cargo on the 14th of May. The master answers positively that he did not know or have notice that the port was in a state of war, or was blockaded by the United States. He did know that the State of Virginia was in rebellion.

The mate answers that he knew Virginia had seceded, but did not know, *from any legal or official notice*, that there was a blockade. He knew it virtually, but not officially or legally. The entry extracted from the log of the 14th of May—imperfect, it is to be presumed, accidentally—still leaves the sense plain enough that the extraordinary alacrity and exertion of the ship's company to complete loading the vessel on that day, was to avoid the *blockade* which would take effect after that time.

It appears, by the documents in proof, that Lord Lyons, at Washington, and the British consul Moore, at Richmond, as early as the 2d and 4th of May, were apprised, from newspapers and other sources of intelligence open to the public, and the fact was freely made known to mercantile men in Richmond, that the ports of Virginia were under blockade. It was a fact of such direct interest and importance to the navigation and trading business of Richmond, that it would be promulgated and known as generally and equally well as the other striking events occurring simultaneously, of the surrender or capture of Gosport navy yard, and the destruction of the United States shipping and naval stores at that port; the first transaction being on the 20th of April, the day this vessel was passing the site of the navy yard into James river, and the other on the 30th, whilst she lay at her wharf at Richmond, in that river. The startling character of these events, the universal arousing of public attention to each, the moving anxieties which would naturally beset owners, masters and freighters of this vessel, and the immediate vicinity of those persons to the hazard in which she might probably be involved, would naturally cause them to become possessed of the earliest knowledge of the condition of public affairs between the United States and Virginia, and particularly of those affecting the condition and safety of this vessel and her purposed voyage. Secession, rebellion, war, and its concomitants, of the capture and destruction of a great seaport and naval depot directly contiguous to Richmond, and at the outlet of the river on which the place is situated, and immediately following those exciting occurrences, the proclamation of a blockade, and the assembling of ships-of-war

to enforce it against that individual port, would inevitably affix such a publicity and notoriety to the events, that none of them, in human probability, could fail to be known to residents in those localities, or persons having individual or business communications with them. They would bear with them, and spread far and wide around them, the strongest and most impressive notoriety. Notoriety greatly less in degree than that which surrounded the laying of this blockade is always regarded, in prize courts, as evidence entirely sufficient to fasten on parties notice of the existence of a blockade which they are found violating. (Wheat. on Captures, 193, 195.)

I can entertain no doubt, upon the proof produced to this point, that the master of the vessel and the claimants had notice of the blockade of this port at the time, and that the blockade was effective in law; nor is there any doubt, in my mind, that the master of the vessel and the claimants, Clarke and Scott, intentionally violated the blockade. The two latter must also be regarded as sufficiently authorized, from their connexion with their co-partners the other claimants, to bind their interest in the cargo also. Beyond that presumption, and the constructive acquiescence by all these claimants in the breaking of the blockade, I think the evidence raises the further presumption of the actual knowledge and assent of the New York partners to the act of the master.

The vessel having left the port of Richmond more than fifteen days after the blockade was imposed, and after notice to her of its existence, and the cargo having been laden on board after the blockade and notice to the claimants thereof, I pronounce the vessel and this portion of the cargo forfeited.

Laurie, Son & Co. intervene in the above suit against the schooner Crenshaw, and claim ninety-one hogsheads and thirty-nine half hogsheads of tobacco, seized as part of her cargo under the allegations in the above libel. The general defences before alluded to are again interposed, and the defence special to this claim is, that the claimants are neutrals, resident in Leith, Scotland, and that they had no notice of the blockade, and never authorized the master to evade it, and had no knowledge of his intention to do so. The ownership by the claimants of the property claimed, and the fact that they are British subjects, resident in Scotland, is verified by oath, duly made before the British consul at Richmond, on the bill of lading in the cause. The goods were shipped at Richmond by the consignors as belonging to the consignees, the claimants. They are proved to be neutrals.

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The Crenshaw.

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The vessel is an American bottom, and no privity is shown between the consignors of this shipment and the master, or that the master acted as agent of the consignees, or was authorized by them to sail in violation of the blockade. The claimants being domiciled in Great Britain, and having no personal or direct notice, and there not being such lapse of time after the declaration of the blockade as that an actual or constructive notice could be implied against them, there is not, in the judgment of the court, an adequate ground laid for the condemnation of this portion of the cargo. The act of the master in violating the blockade is not to be presumed to have been promoted or acquiesced in by the claimants upon these bald facts. Their goods were freighted on board a general ship at a period so immediately after the blockade was imposed, as to preclude all presumption that the claimants in Scotland could have notice of it.

It is, therefore, ordered, that the ninety-one hogsheads and thirty-nine half hogsheads of tobacco seized in this suit be restored to the claimants. No costs are to be allowed against the captors. The vessel and other portions of the cargo having been condemned for a breach of the blockade, and no fact being before the captors to show a distinction existing between the liabilities to seizure of different parts of the ship's lading, the costs for the arrest of the claimants' interest, in common with the residue of the cargo, are, accordingly, not awarded against the captors.

Ludlum & Watson, lately doing business as a mercantile firm in Richmond, Virginia, under that name, and Ludlum & Heineken doing business in New York under that firm and name, intervene and claim in this suit ten tierces of tobacco strips, forming a part of the cargo of the schooner Crenshaw, seized and prosecuted in this suit, the said Ludlum being a citizen and resident of Newport, Rhode Island, and the said G. F. Watson residing in Virginia, and the firm, lately doing business in Richmond, in said State, under the style of Ludlum & Watson, claim an interest in part of said ten tierces of tobacco; and the said Ludlum & Heineken also intervene as agents of Charles Lear & Son, of Liverpool, England, British subjects, as part owners of the said tobacco. The claim and answer avers that the tobacco was laden on board the schooner as the sole property of the claimants, and that it still remains their sole property. They deny that the vessel knew or had notice of the blockade alleged, or attempted to evade the same, or that the master of the vessel was their agent. They also make, in substance, the general objections to the libel interposed in the preceding

suits. The answer admits that the firm of Ludlum & Watson was doing business in Richmond, and its statement that Watson, one of its members, resided in Virginia, must in that connexion be deemed an admission that he resided at the same place where the business of the firm was transacted. This particular is only of importance in connexion with the presumption arising from his position and his being owner and shipper of the goods, that he had knowledge and notice of the existence of the blockade before the goods were shipped, and intended they should be exported in evasion of the blockade. The proofs before referred to satisfactorily establish those facts on the part of the libellants, and not being repelled or explained on the part of the claimants, must prevail against them.

Watson being an alien enemy, his interest in the cargo was confiscable for that cause, and that of his partner, Ludlum, was alike subject to condemnation because he acquired the property in an illegal traffic with the enemy.

The master of the schooner was not, from his office, in judgment of law, agent of Lear & Son, so as to charge them with constructive notice of the blockade because of knowledge of it by the master. The same conclusion applies to the agency of Ludlum & Heineken, which is not shown to have had any connexion with lading the cargo in Richmond. That act, as appears by the bill of lading, was done by the house of Ludlum & Watson in that port, whilst on the evidence Ludlum's personal residence was in Rhode Island, and no evidence is given by the libellants raising a presumption either that he individually, or the co-partnership of Ludlum & Heineken, had any concern with shipping the cargo at Richmond or despatching it from that port to Lear & Son. In my opinion, accordingly, the claimants, Lear & Son, being neutrals, are entitled to the restoration of their share of the ten tierces of tobacco mentioned in this claim without costs against the captors. But inasmuch as the test affidavit or other evidence does not distinguish the amount of interest claimed in this property by the claimants, Lear & Son, nor explain the reason why the whole property was shipped in the name of Ludlum & Watson, and consigned to their order in Liverpool, without any indorsement or recognition of the interest of Lear & Son therein, costs will be adjudged against the said Lear & Son upon their claim, unless further proof be furnished on their part showing that the property mentioned in their claim was *bona fide* neutral and owned by them.

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The Winifred.

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John Caskie and James H. Caskie are claimants of one hundred and eight hogsheads and forty-seven half-hogsheads of tobacco, part of the cargo of the Crenshaw, as owners, and allege that they are citizens of the United States, but do not state the places of their domicile or their legal residences. They take issues and exceptions to the libel, in substance conforming to those put in by the claimants in the preceding causes, and admit that the vessel sailed from the port of Richmond on the 15th of May, and that she and her cargo were arrested in Hampton roads on the 17th of May. The bill of lading found on board of the vessel shows that the cargo claimed was shipped by the claimants at Richmond on the 14th of May, 1861; and the implication, in the absence of all proofs or declarations to the contrary, must be that they were at the time domiciled and doing business at that place.

This, as already ruled in antecedent cases, constituted the claimants, under the proofs brought into the suit on the part of the libellants, enemies of the United States, and, accordingly, the property is subject to condemnation as enemy's property.

Their residence in the port, in the transaction of mercantile business there personally during the period of the blockade, supplies, as has been before shown, satisfactory proof that they had constructive notice of the blockade, and were engaged in the attempt to evade the same by such shipment and despatch of the cargo in question.

Upon both grounds, therefore, I am of opinion that the cargo seized is confiscable, and a decree of condemnation against the same is ordered, with costs.\*

The bark Winifred was seized on the 25th of May, 1861, by the United States steamship Quaker City, under command of Acting Master F. W. Mathews, on the high seas, off Cape Henry, and libelled for attempting to violate the blockade of Hampton roads, in Virginia, and enter that place, it being then blockaded; also, because the vessel and cargo were at the time owned by enemies of the United States. The charge of violating the blockade was abandoned by the district attorney on the trial, and the confiscation of the vessel and cargo was demanded as being enemy's property.

The firm of Crenshaw & Co. intervene for the vessel and five-eighths of her cargo "as sole owners thereof," and claim that they are all citizens of the United States of America, trading in Richmond, Virginia,

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\*The decree in this case was affirmed by the circuit court, on appeal, November 20, 1861. The decree of the circuit court was affirmed, on appeal, by the Supreme Court, (2 Black, 635, 682,) except as to the thirty tierces of tobacco strips claimed by Irvin & Co.

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The Winifred.

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under the style of Crenshaw & Co., and that the bark "belongs to Richmond, aforesaid." The exemption of the vessel from liability to capture as enemy's property is put upon the denial in the claim that the claimants were insurgents, traitors, &c., &c., or enemies of the United States.

John Lewis and Charles Paul Phipps, having their principal house at Liverpool, England, under the style of Phipps & Company, and John Lewis, Phipps and others, trading in the city of New York, through their branch house here, under the style of J. L. Phipps & Co., and in Rio, Brazil, under the style of Phipps Brothers & Company, intervened and claimed to be owners of three-eighths of the cargo of the bark, and to have a lien on, and claim to, and right to the possession of the balance of the cargo, under large advances by them to the other claimants, Crenshaw & Co., and that the claimants are all British subjects; that on the 26th of April, 1861, before any seizure of the vessel and cargo, the claimants *bona fide*, in the usual course of business, and having no other security, made a special advance to Crenshaw & Co., owners of the residue (five-eighths) of the cargo, of the sum of \$20,622 26, on possession of the original invoice and bill of lading thereof, and that such assignment of five-eighths of the cargo to these claimants by Crenshaw & Co. was without any fraudulent purpose or understanding to secure it from confiscation as the property of Crenshaw & Co.

A test oath of part of the claimants verifies the *bona fides* and just consideration of such assignment to them.

The general positions of law and fact adopted by the court in regard to the preceding suits apply to the corresponding points raised in this one :

1. There was, at the time of the capture of the vessel and cargo, a state of civil war subsisting between the citizens of that portion of the State of Virginia in which Richmond is situated and the United States ;
2. The owners and claimants of the vessel were public enemies of the United States and its government at the time of her being taken and seized, and she thereby became subject to condemnation ;
3. The owners of the vessel in their claim and answer assert they were sole owners of five-eighths of the cargo of coffee shipped on her at Rio Janeiro and bound to Hampton roads, and it was consigned to them in the bill of lading found on board the ship. But a title to that portion upon *bona fide* hypothecation or lien is set up in the claim

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The Hannah M. Johnson.

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of Phipps & Co. to the amount of \$20,622 26. No evidence is produced verifying the justness and validity of such lien.

The case, as it stands on the allegations and proofs, fixes the right of property in the five-eighths portion of the cargo to be in the owners of the vessel at the time it was shipped. That title must prevail in a prize court, in priority to the subsidiary interest of lien holders, (*The Marianna*, 6 Ch. Rob., 24,) whatever the equities between the particular parties may be, (*The Frances*, 8 Cranch, 418,) unless it be proved *aliunde* by the claimants that their title to this part of the cargo was absolute in them previous to its exportation.

The judgment of the court upon the whole case, therefore, is, that three-eighths parts of the coffee be restored to the claimants, Phipps & Co., as neutral owners, without costs, and that the remaining five-eighths thereof be condemned as forfeited, being the property of Crenshaw & Co., enemy owners, and also that the vessel be condemned as enemy's property, with full costs.

Further proofs will, however, if prayed for, be granted the claimants, on the claim of Phipps & Co., to the possession and right of property, in themselves, as against the libellants, in that portion of coffee alleged by those claimants to be vested in them, by way of transfer or lien from Crenshaw & Co. The question of costs on such further proofs is to be reserved until a final hearing on that point.

The judgment now rendered is to be final, unless application to give further proofs is made by the claimants on notice to the libellants, and allowed by the court, within ten days after the entry of this decree.\*

The schooner *Hannah M. Johnson* was captured on the 31st of May, 1861, twelve miles to the southwest of Cape Lookout, on the high seas, by the United States brig-of-war *Perry*, under command of Lieutenant E. G. Parrott, and was libelled, together with the cargo on board, for condemnation and forfeiture, as lawful prize. She is charged with giving aid and comfort to the enemies of the United States, and, during her previous voyage and prior thereto, with having carried the flag of the treasonable league called "The Confederate States of America," enemies at war with the United States. An allegation against her, of having violated the blockade of New Orleans, was abandoned by the district attorney, on the trial of the cause.

Three answers and claims, nominally, were filed in the cause; one

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\*The decree in this case was affirmed by the circuit court on appeal July 17, 1863, except as to the five-eighths of the cargo condemned below. As to that the circuit court allowed further proofs. On those that court, December 3, 1863, allowed Phipps & Co. the amount of their advance on the five-eighths, with interest, to be paid out of its proceeds.



by "Charles H. Wells, on behalf of himself and others," (after this word an illegible scrawl was inserted, supposed to be meant for the word "owners,") "of the schooner H. M. Johnson, the respondent also claiming the" (words very faintly written, supposed to be) "cargo, as carrier thereof." The claimants deny most of the charges in the libel. They do not state the ownership of the vessel, or the place or business of her employment when arrested. An answer was also put in by Charles C. Faber and Henry M. Faber, of the firm of C. C. & H. M. Faber, for their interest in sixty bales of cotton on board the schooner, consigned to them at New York, from New Orleans, alleging that she was an American vessel, and that her sailing from New Orleans without a clearance did not affect the rights of the claimants to the cotton. The claimants do not aver any property or interest to be vested in them in the sixty bales of cotton on board the schooner.

An answer was also interposed by Hampton S. Smith and William Patrick, of the city of New York, for their interest in sixty-five bales of cotton on board the vessel. They aver they were in advance to the shippers for the value of the cotton. They do not state who were the shippers, nor what the advance was, or when or how made.

All these claimants make general denials to the charges in the libel, and take substantially the grounds of exception and defence to the suit, which were made in the preceding cases. The mode of pleading the defences in this case is exceedingly indefinite, and discloses essentially nothing of the particulars which the claimants propose to give in evidence in avoidance of the capture. It does not appear upon the claims who is owner of the vessel, or what was the place of her outfit, or what has been the course of her trade or employment. No test affidavits are appended to the pleadings. These particulars are of material importance, on the general charge of the confiscability of the vessel or cargo, as enemy's property, as also on the charge against her for a violation of blockade, had that charge not been abandoned, because, upon the libellants rests the necessity of substantiating the averments of the libel, so far as to show probable cause for the seizure and prosecution; and they are not without relevancy under the further charge that the vessel had been employed in giving aid and comfort to the enemies of the United States in actual hostilities against the government. The mode of pleading not being specifically objected to by the United States attorney, its irregularity or imperfectness will not demand further notice from the court, as those external facts do not appear to have any important bearing upon the merits of the cause.

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The Hannah M. Johnson.

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It is not easy to ascertain from the proofs when the vessel sailed south under her license, or when or at what port she arrived, or how she was laden, and for whose benefit. She appears to have been employed in the winter and early in the spring of 1861, in short trips, on freight, in carrying lumber and produce, between ports of the States of Florida, Louisiana and Texas; and to have terminated that course of business in May, 1861, and on the 14th of that month to have sailed from New Orleans under a Confederate States clearance, freighted with a miscellaneous cargo, all of which remained on board of her at the time she was taken as prize by the libellants on the high seas.

She was built, owned in numerous shares, and registered in the State of New York, one only of her owners residing out of that State, and in the State of Connecticut. The vessel had no interest in the cargo laden on board further than for freight, and the only direct evidence as to the ownership of the cargo is gathered from the loose supposition of the chief mate that it belonged to the shippers, because he knew of no other owners to it. The bills of lading were in all instances drawn to consignees or order or assigns, in no instance designating whether the goods were despatched to the interest of the consignor or consignee; and no letter of advice or explanatory evidence is produced to determine that matter. The shippers and consignors were all at the place of shipment, and leave it wholly undisclosed on the bills of lading that the shipment is not entirely theirs, and for their exclusive benefit. The claimants now ask the intendment to be made, on the claims of Smith & Patrick, that the cotton shipped to their order became, by the address to them, their individual property. Enemy's property *in transitu* does not change its character by such mode of transmission. The prize law will regard the property as retaining its liability to arrest and condemnation, the same as in the hands of its owner when shipped. (Wheat. on Captures, 85; The Marianna, 6 Ch. Rob., 24.) The bill of lading, until indorsed and given circulation as a negotiable instrument, does not pass absolutely, property shipped to an assignee or consignee; and especially in prize captures, it is regarded as remaining the property of an enemy, when exported during hostilities which continue to the time of capture. (The Abo, Appeal Cases in Prize, Spinks, 46.) Ordinarily, the delivery of goods by a shipper to the master of a vessel is a delivery to him as agent of the consignor, and not of the consignee, and will so operate in law, unless explanatory facts on the face of the bill of lading, or otherwise proved, accompany the delivery and evince the contrary. (The Frances, 8 Cranch, 418.) And to that effect is the reason-

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The Hannah M. Johnson.

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ing of the court upon the English cases, (*Lawrence v. Minturn*, 17 How., 100, 107,) although in *Grove v. Brien*, (8 How., 439,) it was held more broadly that a consignment generally (not otherwise explained) vests the goods in the consignee. That doctrine, with the qualification made by the court, no way impugns the rule in respect to prize seizures, and, if it can prevail, and be construed to render the shipment of the cotton at New Orleans an assignment there, in payment of the claimants' debt, that result must be obtained by full and clear evidence that the facts were really so, on which the shipment and the delivery of the cotton to the master of the vessel, at the time of its shipment, was made (*The Abo*, above cited.)

The other claimants, Faber & Faber, do not assert any interest in the cargo in themselves; but, as the claims are framed in exceedingly loose and indefinite terms, and as the arguments on the hearing seem to regard all the claimants as entitled to a common defence, the court is disposed to consider the points applied to one to embrace all the claims pending.

The other allegations in the libel, upon which the libellants urge the condemnation of the vessel and cargo, are that they were used and employed by her in aid of the enemies of the country. The method of such employment is not specified in the libel, nor does it appear that a substantive offence of that denomination is, under the law of nations, imputable to property, either consisting in vessels or goods. It may be made a confiscable offence by municipal law, but it would then fall under the jurisdiction of local and municipal courts, and not be cognizable by prize courts. The court has not been put in possession, since the adjournment of Congress, of the acts passed at its last session; and it is unable to declare that no law now exists in this country subjecting vessels and cargoes belonging to the United States or its citizens to condemnation and forfeiture for the commission of the acts denounced in this libel, nor but that such offences may be placed under the jurisdiction of prize courts. No such law existed at the time of the capture made in this case, and there can be no cause for judicial arrest or adjudication against this vessel and cargo under the public law.

The further charge, that the vessel sailed under, raised, or used, the flag of the enemy during any part of the voyage, is not supported by the proofs. No other evidence is adduced to the fact than the answers to the preparatory interrogatories. Those answers disclose that, in some instances, whilst the vessel lay in enemy's ports, she was compelled by the local authorities to have that flag on board, but that it was

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The Hannah M. Johnson.

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always repudiated by the officers of the vessel as belonging to her, and was destroyed so soon as they had got the vessel to sea out of those ports; and it is not made to appear that the flag was ever used on the vessel after her officers or crew had knowledge or notice that the government of the United States recognized a state of war to be subsisting and waged against them by the insurrectionists or rebels in New Orleans.

The vessel left the port of New Orleans, on her home voyage, on the 14th of May, 1861. The proof does not show that she committed any act previous to that time in aid of the enemy, with notice that war was levied against the United States and recognized by the government. The acceptance of a clearance under the authority of the *Confederated States* was an act of personal misfeasance against the revenue laws of the United States, and punishable under these laws, as being tantamount to coming into port without a lawful one; but it is judicially known to the court that these acts were for a considerable period, and until open hostilities were set on foot by the insurgent States, tolerated as necessities imposed upon loyal vessels absent from their ports of destination, until the rebellion progressed to acts of open hostility on the part of the rebels and insurgents; and accordingly those particular acts at such period must be regarded by the court, in a prize suit, as committed previous to the recognition by the government of an existing state of civil war between the insurgent portion of the country and the government.

In my opinion, therefore, it is not proved, on the part of the libellants, that the claimants of the vessel had actual or constructive notice, at the time the cargo in question was laden on board of her, that a state of war between the insurgents and the government existed and was recognized by the government of the United States; and that accordingly the vessel, her tackle, &c., is not liable to seizure and condemnation for the acts alleged against her.

The cargo was shipped and laden on board the vessel at New Orleans by residents of that place, after the public secession or rebellion of the State of Louisiana, and after the open avowal of war with the United States made by the Confederate States; and all persons domiciled at that place are legally chargeable with the acts of the government under which they claim allegiance. The property so shipped was enemy's property, and liable to confiscation to the United States as such.

The judgment of the court accordingly is that the vessel, her tackle,

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The General Green.

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&c., be restored to the claimants, on payment of costs, there being reasonable cause for her seizure, as she sailed from an enemy port, under an enemy clearance, and without exhibiting, when arrested, full muniments of title as a loyal vessel. And it is further ordered, that a decree of condemnation and forfeiture be rendered against the cargo seized with the vessel, as being enemy property at the time it was laden on board, together with costs, leave, however, being given to the respective claimants thereof to produce further proofs that the cargo when shipped belonged to neutral or loyal owners. Such further proofs are to be furnished at the costs of the claimants, and are to be given within ten days from the entry of this decree, unless further time be allowed therefor by the court or by stipulation of the libellants.

The bark General Green and cargo were captured on the 4th of June, 1861, on the high seas off Cape Henry, by the United States steamship Quaker City, under command of Captain Carr, and are libelled by the United States and captors on the charge that the bark was at the time owned by insurgents, traitors, public enemies, and persons engaged in actual hostilities against the government of the United States, and is liable to condemnation.

Benjamin Atwell, on behalf of W. Oppenheim, interposed a claim to the bark, and alleged that at the time in the libel and claim mentioned she belonged solely to the said Oppenheim, then and still a citizen of the United States of America, residing at Charleston, South Carolina, and if restored will belong to him; that she was sailed under his direction as her master, and was engaged at the time of seizure to take a cargo on freight from Sagua la Grande, in Cuba, to be delivered at Baltimore, Philadelphia, or New York, as the consignee should direct, and was directed to proceed to Baltimore, in the prosecution of which voyage she was captured, as charged in the libel. The claimant denies that the bark was liable to seizure, and excepts generally to the sufficiency of the libel, and avers particularly the matters in substance before set up in the cases of the Hiawatha, Pioneer, Crenshaw, &c.

Claims of Grinnell, Minturn & Co. were interposed to the cargo, but the United States attorney relinquished the charges against the cargo, because it was shipped by loyal citizens before notice of the war.

The only question upon the issue is whether the vessel, being owned at the time of seizure—June 4, 1861—by the claimant Oppenheim,

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The Hallie Jackson.

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and having been his on the 24th of April, 1861, the time of her sailing from Cuba on her home voyage, was just prize of war to a government vessel.

In consonance with the rules adopted by the court in the suits before referred to, it is held that the vessel, her tackle and furniture, are enemy's property, the citizens of South Carolina being at the time in a state of civil war against the United States; and it is accordingly adjudged, that the bark General Green, her tackle, apparel, and furniture, be condemned to the libellants as prize of war, with costs to be taxed and assessed, and that the cargo laden on board the bark be restored to the claimants, but without costs or damages to the claimants, there being probable cause for the capture, it having been laden on an enemy bottom, and exported after the existence of a state of war by South Carolina against the United States.\*

The brig Hallie Jackson, her tackle, &c., and the cargo laden on board, were captured on the 10th day of June, 1861, on the high seas, off the coast of Georgia, near Tybee light, by the United States steamship Union, under the command of J. R. Goldsborough, and have been libelled by the United States and her captors as prize of war, as being enemy's property, and also for attempting to violate and violating the blockade of the port of Savannah, at that time established and existing there, of which the owners of the vessel and cargo had notice.

Bernardi Sanchez intervened, and filed his claim as owner of the vessel, but does not state the facts of such ownership, or his residence, or citizenship. He denies the validity of the blockade of the port of Savannah, and although he avoids asserting in terms that he was without notice of the blockade, asserts that the officer who captured the brig seized her "without any previous notification of a blockade," and raises, by exception to the action, the objections alleged in the preceding cases to the authority of the President to declare a blockade or state of war against citizens of the United States, and to the proceedings in the suit.

The firm of Arganequi, Gonzales & Co., citizens of Spain, and residents of the island of Cuba, claim the cargo of molasses seized on board the vessel, stating that they chartered the vessel to transport the cargo to Savannah if that port should not be blockaded, and if it was found so, then to some other port of the United States; and they aver that at no time before or at the time of the sailing of the

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\* The decree in this case was affirmed by the circuit court on appeal, July 17, 1863.

vessel had they any knowledge or notice that the port of Savannah was blockaded.

The register of the vessel at the custom-house, Savannah, on the 20th of April, 1860, was produced in evidence. The proofs, without the aid of that document, are unexceptionably clear that the vessel belonged to a citizen resident in Georgia, and carried impressed upon her more than a constructive character of enemy's property. She had been under the employ of the same owner on voyages between Savannah and Matanzas repeatedly before the one now on inquiry, and in a trade, it seems, under his own direction and for his special account. When she left Savannah, on this last trip, it was after the well-known state of war between the seceding States and the United States was on foot, and the proclamations of the President of April 15, 19, and 27, and May 3, 1861, had been issued and were personally known to the ship's company and her owner at Savannah, as appears on the evidence of the first mate upon his examination upon the preparatory interrogatories in this suit, and the expectation of the owner was expressed that the blockade of the southern ports declared by the President would be directly put in force. The vessel was despatched under the secession flag. She used that flag on her voyage out, in Matanzas when lying in that port, and on her return voyage, until, apprehending it might be perceived by United States vessels, the master ordered the American flag to be substituted. The master, on the approach to him of the capturing vessel, ordered the mate to conceal the secession flag on board the brig, and it was afterwards found on board the brig and given up to the captors. These facts show not only that the vessel belonged to an enemy, but his purpose to navigate her as such, in defiance of the laws and government of the country to which he owed allegiance.

The doctrine that such use of an enemy's flag is a mark and token of her real ownership is strongly maintained in the English prize court, (the *Vrow Elizabeth*, 5 Ch. Rob., 45;) and Sir William Scott declares it to be the established rule of law that a vessel is clothed with the character of the flag she wears. (*Id.*, note.) This brig, when she sailed from Georgia, and when she was seized, was thus plainly enemy's property, and she was properly captured as prize of war.

The cargo is claimed by the firm of Arganequi & Gonzales, who are represented to be subjects of the Queen of Spain, and neutrals. The evidence to prove the property neutral consists of three particulars:

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The Hallie Jackson.

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1st, the test oath and claim, both made by an agent of the claimants, and chiefly on the information of the master; 2d, a charter-party, executed between the claimants and the master of the vessel June 1, 1861; 3d, the bill of lading, dated June 4, 1861.

The test oath supplies no fact in confirmation of the alleged ownership of the cargo by the claimants. The first mate and Lee, a seaman, testify, on the preparatory examination, their understanding and belief that it belonged to the owner of the vessel, and would be his if delivered according to its destination. The test witness supposes it to belong to the claiming firm, because he was so informed by the master of the vessel; but the master, on his preparatory examination, fails to state any fact going to establish such ownership, further than the formal shipping of it under a charter-party and bill of lading. The claimants, he says, were strangers to him, and he did not know they were residents at Matanzas. Lee, the seaman, says he supposed the cargo belonged to the owner of the vessel, or to him and his brother, residing at Matanzas.

The bill of lading consigns the cargo from the claimants to the owner of the vessel or assigns. If this document imports, *prima facie*, that the consignors were proprietors of the goods, yet that intendment is so feeble and inconclusive, particularly in prize cases, as to demand, in any equivocal case, explanations by satisfactory proof produced on the part of the consignors. (See the preceding case of the General Green and the authorities cited.)

The charter-party, made almost concomitantly with the bill of lading, (the one on the 1st of June and the other on the 4th,) would seem to aim at but one object, and that was to obviate the necessity of fulfilling the bill of lading literally as to the place of delivery of the cargo, because, in other respects, the bill of lading is made subordinate to the charter-party, and the latter imparts no privileges or powers to the takers of the charter-party, in respect to the ship or voyage, not consequent upon the ordinary contract of affreightment, and no security or enhancement of freight or stipulation respecting contingencies of the voyage is arranged in behalf of the givers of the charter-party. The charter-party, however, read in the light of public facts existing at the home port of the vessel, manifestly denotes that the instrument was shaped and executed with the purpose to meet a condition of the blockade of the port of Savannah when the brig should arrive there, and provide relief for her in case she should thus be shut out from that port. The terms of the arrangement are, that the brig, "being



so loaded, shall therewith proceed to Savannah, (United States,) or so near thereto as she may *safely get*, and deliver the same to said charterer's agent."

The proximity of Matanzas to Savannah, the exciting events occurring throughout the United States, and particularly the southern ones, and the large commercial intercourse between Cuba and those ports, would leave, as matter of presumption and constructive notice, no doubt that these parties mutually understood the state and manner of hostilities then pending between the United States and all the ports of Georgia, and that the parties in this charter-party contemplated a state of blockade, then subsisting at the port of Savannah, and meant to provide a resource in this stipulation, in case the vessel should not succeed in evading the blockade.

The neutral merchant becomes a participator with the enemy in any undertaking or device to violate a blockade, and his property is thereby made to share a common fate with the enemy's itself.

That there was, in fact, an effective blockade established at the port on the arrival of the brig is demonstrated by her arrest there; and that she was not entitled to be warned off, if approaching the port with intent to violate it, is abundantly established by the authorities. (Wheat. on Captures, 203, 207; Ibid., 193, 194.)

In my opinion, the vessel captured in this case is subject to condemnation: *first*, as enemy's property at the time of its seizure; *secondly*, because the vessel wilfully attempted to violate the blockade of the port of Savannah, with knowledge that such blockade existed at the time; *thirdly*, that, upon the facts and the law applicable to them, the cargo laden on board the vessel was also the property of her owner, and belonged to the enemy; *fourthly*, if the cargo, on a review of the case, shall be found to belong to the claimants, it was shipped and directed by the claimants to the port of Savannah, with knowledge of the war and notice of the blockade of that port, and with intent to evade and violate such blockade.

Judgment is rendered for the condemnation of vessel and cargo, with costs \*

The ship North Carolina was captured, on the 14th of May, 1861, at sea, off Cape Henry, by the United States ship Quaker City, under the command of Acting Master S. W. Mathew, and was libelled by the United States and her captors, as subject to forfeiture, for violation of the blockade of the Virginia ports, and as enemy's property.

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\*An appeal as to the cargo was taken by the claimants to the circuit court, and is still pending. No appeal was taken as to the vessel.

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The Forest King.

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On the trial the United States district attorney abandoned all the other charges than that she is the property of enemies. Her master, for himself and other part owners, intervened, and took issue upon the charges, averring that the vessel was owned by him and co-owners in the State of Virginia, and denying that they were insurgents, and asserting that they were true and loyal citizens of the State of Virginia. Her crew also intervene by claim for wages due them for services on board the ship up to the time of capture, amounting to \$277 79.

The test oath made by the master is, that the ship belongs to Norfolk and other ports of Virginia, but no other particulars of ownership are stated, except a partial list of the names of the owners; and he adds, in answer to the fifth preparatory interrogatory, that the ship belonged to Harvey & Brothers, of Norfolk, Virginia, and the orphan children of John Gordon, deceased, and John Tanis, and John Foster, and Seth Foster, (the witness,) all the owners being residents of Norfolk but the two last, who are residents of Mathews county, Virginia.

The vessel was captured without cargo on board.

It has already been so often ruled by the court, in disposing of the preceding suits, that the hostilities waged by rebels and insurgent citizens of the United States, under the appellation of seceding States, or Confederate States, against the government, laws and Constitution of the United States, constitute a condition of public war, and that the rebels levying such war have become enemies of the United States, notwithstanding their allegiance to the mother country, and in public acceptance residents of the State or place waging war, that it is needless to reiterate that doctrine on this occasion.

It being considered by the court that the ship North Carolina, when captured by the libellants, was the property of enemies of the United States in open war against them, she is adjudged lawful prize of war, and ordered to be condemned in this suit, with costs of suit.\*

The schooner Forest King, her tackle, &c., and cargo were captured on the 13th day of June, 1861, in the harbor of Key West, by the United States flag-ship Mississippi, under command of William Mervine, flag-officer. The libel charges that various other vessels of the United States were in sight at the time of such capture, and that the master of the schooner had notice and due warning of the blockade of the port of Key West, yet entered such port and violated the blockade thereof, whereby the schooner and her cargo became liable

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\* The decree in this case was affirmed by the circuit court on appeal, July 17, 1863.

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*The Forest King.*

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to condemnation as lawful prize ; that the cargo laden on the schooner was enemy's property and liable to seizure and condemnation as such. The owners of the vessel, alleging that she was held in separate shares, all but four thirty-second parts, or one-eighth part, by residents in the State of Massachusetts, and that the one-eighth share is owned by a resident in Darien, Georgia, intervene and claim the vessel as an American bottom, owned by citizens of the United States, and deny that she is subject to seizure by reason of any charges in the libel contained. They state that she sailed under a charter-party, dated at New York, January 17, 1861, for a voyage to Rio Janeiro, in Brazil, and back to an Atlantic port of the United States north of Cape Hatteras, or Gulf port of discharge in the United States, (Philadelphia and Boston excepted,) took on board a cargo of coffee in bags, and sailed from that port April 20, last past, bound to New Orleans ; that having learned that the Mississippi was blockaded, she altered her course and spoke the blockading squadron at Pensacola for information, and there had a warning indorsed on her register against entering Pensacola, or any other port south of the Delaware, as they were all blockaded ; that the schooner on June 30 entered the port of Key West to obtain supplies, and for no other purpose ; and that the vessel was there seized as prize. The claimants also interpose exceptions similar in substance to those taken in other antecedent causes to the course and validity of the suit and the jurisdiction of the court.

The firm of Rostron, Dutton & Co., trading at Rio Janeiro, and of Richard Rostron & Co., (through their agent,) of Manchester, England, British subjects, intervene and claim the whole cargo seized, and deny that the master was their agent, in relation of the cargo, in the navigation of the ship ; that any of the owners of the cargo were and are enemies of the United States ; that they had any knowledge or notice that Key West was blockaded, or that they attempted or intended to violate any blockade in the importation of the above cargo ; and a commercial agent of theirs verifies the statement of their interest in the claim by his test affidavit.

Upon the issues and proofs, it appears to the court that no rightful cause of seizure is established against the cargo that was shipped, by two bills of lading, dated April 16, 1861, at Rio Janeiro, by the claimants, to P. A. Giraud & Co., or to their assigns, in New Orleans. Two causes of seizure are alleged against the cargo : first, that it was the property of citizens and residents of a blockaded port, and belonged to the consignees, who are enemies of the United States ; and secondly,

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The Forest King.

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that the ship, with knowledge that the port was blockaded, attempted to violate the blockade; and it would seem, further, to be urged that she was confiscable for afterwards entering Key West under formal warning.

Supposing the rule is not definite, whether the consignors or consignees shall, in presumption of law, be deemed owners of goods *in transitu*, on affreightment, evidence is furnished, in this case, which relieves that uncertainty, and shows that the cargo was shipped as English property by the consignors. It is so stated in the test oath by the agent of the owners, and also in the affidavits made before the British consul in Rio Janeiro, upon the bills of lading, at the time of their execution; and the consignors assumed control of the consignment in written instructions directed to the master after the vessel sailed, and which were taken with the ship's papers. These supply but slight facts, but are sufficient to indicate that the property was not intended to vest in the consignees, but remained at the control of the shippers on the voyage; and it belonged to the captors to give evidence changing that presumption. Had the evidence, then, convicted the master of an intent to violate the blockade, it would not affect the neutral cargo, because he is not shown to have been agent of the owners of the cargo, so as to render his illegal act binding upon them, or to subject their property to his control.

The cargo, therefore, must be restored to the claimants, but, the ship being in part confiscable for other cause, the captors are not responsible to the claimants for damages because of the arrest of the cargo, that having been placed at the risk of the owners, in a bottom liable to seizure and condemnation by the prize law.

I do not think adequate proof has been given by the libellants to convict the schooner of a wilful attempt to violate the blockade after notice thereof. The voyage round was undertaken at New York, in January, 1861, and the cargo was laden on board, and the vessel cleared on the voyage in question, at Rio Janeiro, on or about the 16th day of April, 1861, so nearly coincident with the earliest public act of the President of the United States recognizing the commencement of public hostilities by the insurgents against the United States, and the proclamation by Jefferson Davis, president of the Confederate States, announcing such hostilities, that it would, on account of the distance of the United States and Brazil apart, be impossible for actual notice to have reached the claimants that their shipment could not legally be directed to New Orleans. Prize courts regard physical disabilities

of that character, in judging the *bona fides* of commercial operations, and forbear exacting from neutrals that exactitude, in conforming to the instructions or conduct, on very remote adventures, which would be enforced in those within reasonable proximity. (The Betsey, 1 Ch. Rob., 332; Wheat. on Captures, 194, and cases cited.)

The master testifies that he approached Pensacola to ascertain the fact whether a port could be entered in that vicinity free from blockade, and that he, in making that attempt, received the first formal notice of the blockade of that section of the coast and up to the capes of the Delaware. I consider that his conduct in making the inquiry or search he did was blameless. So, also, I regard it as within the fair spirit of the doctrine adverted to that the master, under the information and suggestions given by officers of the United States blockading squadron off that coast at the time he was warned off, that he could properly go into Key West for supplies or stores, committed no evasion of the blockade of that port in entering therein. This is recognized by Lord Stowell as a fair and reasonable excuse for the entering of a blockaded port (The Neptunus, 2 Ch. Rob., 110) by a vessel acting in good faith on such notice; and as no claim for further proof has been made to the court to correct or impeach the testimony to this point, I shall accept the statement as true, and presume that the schooner was taken by her master into Key West for the purpose of obtaining supplies necessary to the voyage. Neither he nor his mate seems to have been required, on the preparatory examinations, to specify the wants of his vessel at Key West, or whether or not they were obtained by her. I must, on the case as it stands, regard the object of her visiting Key West as admitted to be that stated by the witnesses in their examination *in preparatorio*. The visit was for an allowable object, and the doings of the master do not therein compromise the safety of the vessel. The extra extent of the voyage to be performed renders probable the assertion that the vessel required further stores, and, at all events, removes the suspicions that generally apply to such excuses. (The Fortuna, 5 Ch. Rob., 27; The Hurtig Hane, 2 Id., 124.)

I shall, accordingly, reject the application to condemn the vessel in full, and direct seven-eighths of the value to be restored to the loyal owners named as claimants. One-eighth of the value of the vessel owned by a claimant resident in the State of Georgia, being enemy's property, is condemned, with costs; and, part of the vessel being right-

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*The Lynchburg.*

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fully seized as enemy's property, the owners of the cargo are not entitled to costs against the captors.\*

The schooner *Lynchburg* was captured, with the cargo laden on board of her, on the 13th of May, 1861, at the mouth of Chesapeake bay, off Cape Henry, by the United States steamship *Quaker City*, under the command of Acting Master S. W. Mathews, and both were libelled by the United States and other captors as prize of war. It is alleged that the schooner and cargo were enemy's property, belonging to citizens and residents of the State of Virginia, and, also, that when captured they were attempting to violate the blockade of the port of Richmond.

Three several claims are interposed in defence to the libel in this suit.

Richard O. Haskins and nineteen others answer and claim, as owners of the vessel, being all of Richmond, and admit that the schooner and part of her cargo were owned by residents within the State of Virginia, as charged in the libel. They deny an intention to violate any blockade of that port, or knowledge or notice of such blockade. They also deny that the blockade was laid by any competent authority.

Charles F. Wortham & Co., also of Virginia, claim to be owners of 1,008 bags of coffee, part of the cargo of the schooner, and take issue upon other allegations of the libel; and they also claim an interest in 504 other bags of coffee, part of said cargo, marked M\*.

Charles H. Pierson, as agent for John Currie and others, also interposes an answer and claim, as owners of the schooner and carriers of the cargo, and claims for their interest as carriers only. No test oaths accompany either of the answers of the claimants, except the answer and claim of Brown Brothers & Co., who intervene upon a transfer or lien of 2,045 bags of coffee, part of the aforesaid cargo. They allege, in substance, that they made an advance of credit to Maxwell, Wright & Co., about the 16th of November, 1860, to the amount of £20,000, for the purchase of Brazilian produce, under which credit the said firm of Maxwell, Wright & Co. drew drafts on the claimants for £6,090, on the condition, expressed therein, that the coffee purchased should be held by the claimants until their advances were reimbursed thereon.

The claimants being loyal citizens, and the said Maxwell, Wright & Co. neutrals, it was claimed that such arrangement between them vested the possession and ownership of the coffee in the claimants until the repayment of their advance. On a subsequent motion before

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\* The decree in this case was affirmed by the circuit court on appeal, July 17, 1863.

the court, and also on the final hearing in court, it was admitted by the United States attorney that 1,551 bags of said coffee covered by that title should be released and discharged from this arrest and suit in favor of Brown Brothers & Co.

The answers and claims put in to the libel are drawn up with very unnecessary diffuseness. They employ the formalities in statement and defence perhaps appropriate for bills for discovery in equity, but presenting no matters necessary for them to maintain by pleadings in defence to a prize suit. Indeed, each claim includes, in a single clause, all the answer called for in prize actions, which is a brief assertion that the property seized is not liable to condemnation and forfeiture.

There is no controversy, on the trial, that the schooner was owned by residents in Virginia, nor that 1,008 bags of coffee, part of her cargo, belonged to Wortham & Co., claimants, also resident there. The further defence is, that the residue of the cargo (504 bags) is subject to the title or lien of Brown Brothers & Co., not enemies.

The vessel was registered in Richmond, January 25, 1861, as the property of owners residing at that place, and was captured at sea on her voyage to her home port. The rule sufficiently declared in preceding suits on this hearing, and made applicable to this one, subjects the vessel to condemnation and forfeiture for that cause, as prize of war.

The answer of Charles F. Wortham & Co., claiming to be owners of 1,008 bags of coffee, and also to have an interest in the 504 other bags of coffee, as above stated, part of the cargo of the vessel, and admitting themselves to be residents of Virginia, places their whole interest in the cargo in the same predicament, and for like cause, as also all portions of the cargo, if any, not claimed or falling within the claim of Wortham & Co. The United States district attorney having consented to the restoration of 1,541 bags of coffee to Brown Brothers & Co., as belonging to them, and being neutral property, and no proof of any other claim than that of Wortham & Co. being before the court for any residue of the cargo seized, the judgment of the court will be entered in favor of the libellants, against both the schooner and the residue of cargo not restored, as above stated, with costs.

On the attendance of counsel before the judge, subsequent to the above order for judgment in the case of the Lynchburg, to settle the terms of the decree to be entered therein, it was insisted on the part of the claimants, Brown Brothers & Co., that the decree ordered was defective, in omitting to direct separately the condemnation of 504

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The Lynchburg.

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bags of coffee, composing part of their claim of 2,045 bags mentioned in the pleadings, or its restoration to them.

The judgment was given by the court under the impression that the claim of Brown Brothers & Co. had been satisfied by the restoration to them of 1,541 bags of coffee, or otherwise, in connexion therewith, (and so it is insisted by the United States attorney was the fact,) and that no contest remained in court with these claimants, in respect to the residue of the 2,045 bags for which they originally intervened in the cause; and that, consequently, no other claim to this portion of the coffee remained to be considered than that of C. F. Wortham & Co., or some unknown owner at the port of destination. The counsel for the claimants, Brown Brothers & Co., however, insisting that their claim to 504 bags of coffee, (the residue of the 2,045 bags,) alleged to have been hypothecated as security for their advance for its purchase, yet remains undetermined and outstanding, and that they are now entitled to a decree for the restoration of that residue to them, as their absolute property, by virtue of the shipment under the original bill of lading, the court has re-examined the pleadings and proofs in the cause, with a view to rectify the error, if one has occurred, before fixing the terms of the decree, and entering final judgment thereon. On reconsidering the pleadings and proofs, I am of opinion that the decree, as rendered, is technically correct:

1. Wortham & Co., also claimed the 504 bags of coffee embraced in the general claim of Brown Brothers & Co.

2. Brown Brothers & Co. do not prove the amount of their advances actually paid in the purchase of the coffee claimed by them, nor do they specify such amount in their claim and answer, or in the test oath appended thereto.

3. No proof is given by the claimants that the value of the 1,541 bags of coffee restored to them is not equivalent to the sum of their advances used in purchasing the whole 2,045 bags; and the reasonable presumption is, that the restoration of two-thirds of the quantity consigned as security satisfied the whole credit.

4. The claim to an absolute ownership of the 2,045 bags was placed before the court in the oral argument, and in the written points filed in the cause by the counsel for the claimants, upon the proposition of law, that a bill of lading, transmitted to them by the shipper to cover advances, passed to them the title to the cargo purchased therewith. If this doctrine be correct as to mere commercial transactions, it does not prevail in prize courts, in derogation of the rights of captors, when



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The Falcon.

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the interest of the claimants is only a debt, although supported by liens equitable and tacit, or legal and positive, even of the character of bottomry bonds, when not signified on the ship's papers at the time of her capture. (The Frances, Irvin's claim, 8 Cranch, 418; The Tobago, 5 Ch. Rob., 218; The Marianna, 6 Ch. Rob., 24.)

5. Here, the vessel was enemy's bottom; the bill of lading consigned the cargo *to order or assigns*, at large, at an enemy's port, and, on the surrender of the principal portion of the consignment to the claimants, no other evidence was given in establishing the fact that the remainder of the shipment was owned by them, or yet stood under hypothecation to them on the bill of lading.

If, then, the court concluded, erroneously, that the whole interest in the shipment had been satisfied and abandoned on the surrender of 1,541 bags of coffee to the claimants, yet the judgment is correct as it was rendered, including the condemnation of the 504 bags, because, by intendment of law, that portion belonged to Wortham & Co., and was not shown by the proofs to be exempt from capture as prize.\*

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THE SCHOONER FALCON AND CARGO.

On special order of the court the testimony of captors and witnesses present at the capture was allowed; the master, crew, and passengers not having been sent in with the vessel, but having been inadvertently allowed to leave her near the place of capture.

Vessel and cargo condemned as enemy property, and also under the acts of July 13, 1861, and August 6, 1861. (12 U. S. Statutes at Large, 257, sec. 5, and 319, sec. 1 to 3.)

The practice in American prize courts is to make final condemnation of enemy property at the hearing of the cause, upon the ship's papers and the evidence *in preparatorio*.

The suspension of a year and a day after a default is allowed only when it is doubtful upon the evidence whether the property captured belongs to the enemy or is neutral.

(Before BETTS, J., September 5, 1861.)

BETTS, J.: This vessel was captured on the 5th of July, 1861, by a United States war steamer, under command of James Alden, commander in the United States navy, off Galveston, Texas, in the Gulf of Mexico, and was sent in charge of a prize crew, by the master of the steamer, as prize of war, to this port, where she arrived and was delivered to the possession of the prize commissioners about the 20th of August thereafter. At the time of the capture of the schooner the commander of the steamer inadvertently allowed the master, crew,

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\* The decree in this case was affirmed by the circuit court, on appeal, July 17, 1863, as to the vessel and cargo, except as to the 504 bags of coffee. As to those, the claimants were allowed to give further proofs. Ultimately the 504 bags were restored, by consent, to the claimants.

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The Falcon.

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and passengers of the schooner to go on shore in Texas, and no person who was on board the schooner at the time of her capture was detained and sent with her in charge of the prize master and crew, or was or could be produced on the examination *in preparatorio* in the suit. On affidavit showing these facts, and on motion of the attorney for the United States, the testimony of captors and witnesses present at the capture was, by order of the court, allowed to be taken and read on the hearing. This is the established practice of the French prize courts, but would, it seems, be regarded as irregular in the English and American tribunals, except upon special circumstances outside of the common law rules of practice prevailing in those courts.—(The *Henrick and Maria*, 4 Ch. Rob., 57, note; The *Eliza and Katy*, 6 Ch. Rob., 189, 190; Pritchard's Adm. Digest, 421, (333;) C. Robinson, *Collectanea Maritima*, 75, art. 6; 5 Wheat., App., 496.)

The papers found with the schooner on her capture prove that she was enrolled by H. Seaburn, her owner, a resident of Texas, March 19, 1857, and licensed to him at the same place June 11, 1860, and was laden with cargo shipped from enemy ports in Louisiana to enemy ports in Texas.

No party intervenes to claim the vessel and cargo. In addition to these facts, proving the vessel and cargo to be enemy property, the evidence *in preparatorio* shows that the vessel had on board an enemy flag, and that the master admitted he had used it on the last voyage.

It is of less importance to scrutinize the regularity of points of practice in the suit, as purely a suit in prize, because the property captured and seized, being now held in custody by the United States, both on its capture and also by arrest upon process out of the court, appropriately falls within the provisions of the acts of Congress of July 13, 1861, and August 6, 1861, (12 U. S. Stat. at Large, 257, sec. 5, and 319, sec. 1 to 3,) and being thus held within the cognizance of the court, the attorney for the United States moves the court to order its confiscation, pursuant to the authority of those acts. It is adjudged by the court that, both upon the original capture of the property libelled and the prayer of the libel, and upon such motion of the United States attorney on the pending arrest and seizure of the schooner, her tackle and cargo, the same be condemned as enemy property and prize of war, and be confiscated to the use of the libellants, according to law.

The practice in American prize courts is to make final condemnation of enemy property at the hearing of the cause upon the ship's papers

and the evidence *in preparatorio*. (The Harrison, 1 Wheat., 298.) The suspension of a year and a day after a default is allowed only when it is doubtful, upon the evidence, whether the property captured belongs to the enemy or is neutral. (Id.)

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#### THE SCHOONER VELASCO AND CARGO.

Vessel condemned as enemy property.

Her cargo, being neutral property, on transportation in a lawful trade, released, without cost to the captors, there having been no probable cause for its arrest.

Whether the captors, as distinguished from the United States, can have an award of costs in a prize suit, *quære*.

A claim of the master to be reimbursed his advances for repairs and necessary supplies for the vessel rejected.

A claim of the crew for their wages rejected on the ground that the vessel was enemy property.

(Before BETTS, J., October, 1861.)

BETTS, J.: This vessel was captured at sea, off Cape Hatteras, by the United States vessel-of-war Albatross, July 18, 1861, and sent into this port, with the cargo on board, both as prize of war. The cargo was merchandise purchased for and shipped at Matanzas to merchants of New York, as their property, and the United States attorney, on the trial, abandoned all claim against the cargo, including costs to the United States in this suit, on its capture. Mr. Upton, of counsel for the individual captors and libellants, insists that costs should be imposed on the cargo, there being valid cause for the capture of the vessel, and reasonable cause for the arrest of the cargo.

No formal claim was filed in court in behalf of the owners of the cargo. The master of the vessel filed a claim in his own behalf and for his principals, the owners of the vessel, denying the lawfulness of her arrest, and averring that she is not the property of enemies of the United States, but is owned by citizens thereof, and averring that she is not liable to condemnation as prize of war. He also sets up a claim to be reimbursed for advances made by him, as master of the vessel, for her repairs and necessities whilst under his command, to the amount of \$184 75. Daniel M. Stebbins filed his libel against the vessel and cargo, to recover wages for his services as a seaman on board the vessel during her last voyage. The United States appeared to that suit, and denied the right of action set up by the libel. It was admitted, on the trial, that other members of the crew on the same voyage had outstanding claims of the same character, which the counsel on both sides desired should be considered and disposed of by the court in the decree to be rendered in this cause. The libellants deny the

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The Velasco.

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right of the master or crew to any lien or remedy against the vessel or her cargo upon either of these claims.

The ship's papers found on board at the time of her seizure, and the preparatory proofs, show that the owners of the vessel reside in Florida and Texas, and did so at the time the vessel left port on her last voyage. The master testifies, on his examination *in preparatorio*, that he is a naturalized citizen of the United States; that his family lives in Brooklyn, New York, where he had resided ten years; and that he has resided for the last two years in Pensacola, Florida. He knew of the state of war existing before he entered upon the voyage, and that the southern States were blockaded by the United States, before he went to Matanzas and entered upon the voyage thence to New York. The cargo began to be laden on board there the 6th of July last.

There is no controversy, upon the proofs, that the vessel was the property of enemy owners at the time of her capture and entering upon the voyage in question, and she is, therefore, condemned as lawful prize to the libellants, with costs; but she was a lawful bottom, on which neutral cargo could be transported from one neutral port to another, or to a port of a belligerent not in a state of blockade. (1 Kent's Comm., 59.) The cargo shipped from Matanzas to New York was, therefore, transported in a lawful trade, and was properly released on arrival here from arrest, and restored to its loyal owners in this port. (1 Kent's Comm., 124.)

It seems to me, also, that the restoration must be absolute as to the libellants, without any condition of costs against the claimants. There were no facts upon the face of the papers, or produced from the preparatory proofs, creating a probable cause for arresting this cargo. Its transportation in an enemy's bottom was legal and innocent as to the neutral shippers, and lawful in respect to the master or owners of the vessel; and the evidence is clear of all color of semblance that the shipment was under any agency or connivance of the consignees, with a view to aid or promote the navigation or commerce of an enemy marine, or with knowledge or notice that such mode of conveyance was to be employed.

The claim of costs in behalf of the individual captors must, accordingly, be denied. I do not touch in this decision the point whether, in suits so framed and conducted, the individual libellants so associated with the United States as party actors can have a decree for costs to themselves separate from an award made to the libellants in common, and whether, in this class of prize actions, the United States have or

not the entire control of the suit in respect to incidental expenses, as well as its disposition upon the merits.

The demand of the master, through the claim and answer interposed by him to this suit, that he be repaid, out of the proceeds of the vessel, the disbursements made by him for her use, cannot be maintained. If this demand was an incumbrance at all on the vessel, by the jurisprudence of the place where the alleged credit was given, the lien was a tacit one, no way manifested by the ship's papers, and of a character which Sir William Scott held not to be sufficient to support a claim of property in a court of prize. (*The Marianna*, 6 Ch. Rob., 24.) And he even refused to recognize the claim, although resting in a bottomry bond, because it amounted to no more than a right of action, although of a character highly favored in maritime courts. (*The Tobago*, 5 Ch. Rob., 218.) The claim must be rejected.

The demand of wages to the seamen on board of the schooner is not brought before the court technically by way of claim or answer to the libel, but one of the crew filed a libel against the vessel, for the recovery of his wages on the voyage upon which she was arrested, and the question respecting his right so to be allowed wages, or to have them awarded to the crew, is submitted to the court on the general hearing upon the issue in the suit for the condemnation of the vessel as prize.

This vessel being owned by enemies, at war with the country, the United States, as her captors, stand in no relation of equity making them or her proceeds answerable to the seamen navigating her for enemy owners. The services on board of her in that character were in prejudice of the interests of the United States, and no way in promotion of them. It was in direct conflict with the interests and safety of the United States that the enemy should be enabled to carry on trade in their vessels, either from and to her own ports or those of neutral powers, and it is a dereliction of duty and allegiance to their own country to engage, in any capacity, in navigating the vessels of an enemy, or giving any support to such navigation. (*The Benjamin Franklin*, 6 Ch. Rob., 350.) The goods of neutrals, honestly placed on board the vessel, would be exempt from arrest, because intrusted to such carriage; but the vessel, as a means of conveyance in the interest of the enemy, by all the rules of public law, becomes justly prize of war to the government against which her owners are waging war.

Sir William Scott says, in the case of *The Friends*, (4 Ch. Rob., 144,) that nothing can be better settled than that the act of capture

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The Lynchburg.

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defeats all rights and interests of seamen to and in wages for service in the captured ship; and this rule stands firm in the elements of public law, except as modified by the event of a recapture of the vessel and her virtual restoration to her original owners. (3 Kent's Comm., 192, and notes; Curtis on Seamen's Rights, 378 and notes; Abbott on Shipping, part 4, ch. 3, and notes, 5th Am. ed., by Perkins; 1 Parson's Mer. Law, 274, note 2.) The seamen, therefore, possess no legal claim for wages earned on an enemy vessel; and no equity arises in their behalf, because no act has been rendered by them contributing to the seizure of the vessel, intended for the benefit of the captors. The libel filed in their favor against the vessel or her proceeds in court must, therefore, be dismissed, with costs. The case presented by them bears no analogy to a prosecution by seamen against a vessel recaptured and restored to her original owners, and thus made capable of earning wages for their benefit. These seamen were serving voluntarily on board an enemy vessel, and it no way strengthens their claim that they are in part neutrals, and in part loyal subjects of the United States, in their private sentiments. They were acting on the voyage in support and furtherance of the interests and commerce of an enemy, and against the rights of the United States, and both their suit and petition, as against the proceeds of the captured property, must be dismissed.

Decree accordingly.

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THE SCHOONER LYNCHBURG AND CARGO.

The cargo having been delivered to the claimants on bail before hearing, it afterwards appeared that it had been appraised at less than its real value, and that the security was in too small an amount. A motion was made that the cargo be restored to the custody of the court, but it appearing that it was no longer in the possession of the claimants or the bail, but had passed to *bona fide* purchasers, the court awarded monitions against the claimants to pay into court the difference in amount between the proceeds or value of the cargo delivered to them and the amount of the bail.

Property seized as prize may be pursued *in rem* into the hands of all persons who become possessed of it, or by monition against such persons, if its proceeds have been brought into court.

It matters not whether the prize goods remain in kind or have been disposed of *bona fide* by sale. The holder of the thing or of its proceeds may be compelled, by monition, to deliver the same into court, to be there disposed of according to the rights of the captors.

And this may be done as against persons having the proceeds of prize property in their hands, when an insufficient stipulation has been taken, on a delivery on bail.

(Before BETTS, J., October, 1861.)

BETTS, J: After the capture of the above schooner and cargo, a motion was made, by consent of the proctors of the several parties, that Joseph Ruch be appointed sole appraiser to appraise the value of

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The Lynchburg.

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the said schooner and cargo, and such order was granted by the court on the 17th of June last. On the 20th of June the appraiser reported that he had appraised the vessel as worth \$5,000, and the cargo as worth \$24,593 85. On the back of the appraiser's report was indorsed a consent, signed by the assistant United States attorney, that the cargo be divided and valued as follows: the 1,008 bags, claimed by Wortham & Co., at \$8,197 95, and the remaining 2,045 bags, claimed by Brown Brothers & Co., at \$16,395 90. Under the consent an admission was written by the assistant district attorney, of due service of notice of justification of the sureties for giving bond, on the delivery of the cargo above mentioned. Both indorsements were, apparently, signed July 1, 1861, and were, with the report, filed July 10, 1861.

On the hearing of the cause in court, July 16 and 17, an order was made, by consent of the proctors for the libellants, and upon the motion of the proctor for the claimants, Brown Brothers & Co., that 1,541 bags of the coffee embraced within their claim be restored to the said claimants. On the same proceedings, the proctors for the libellants, on notice to the proctors for the claimants, C. T. Wortham & Co., that the appraiser, in making the before-mentioned appraisements, had, by mistake of computation, undervalued and reported the said coffee at a sum much less than its actual worth, to wit, that the coffee appraised by him at \$24,593 85 should have been valued and reported worth \$56,212, as shown by his amended report, signed by the said appraiser July 9, 1861, applied for an order that the cargo delivered to the claimants, on such appraisalment, should be restored to the custody of the court, or for other relief.

Affidavits produced on the part of the claimants, C. T. Wortham & Co., against the motions made by the libellants, were read and filed, and arguments were addressed to the court by both parties, on the facts and the law claimed and set up on each side. As it was understood by the court, from the statements of the depositions, and the allegations of counsel, on the first discussion of the motion, that the property was no longer in actual possession of the claimants, or the sureties upon the bonds and bail given, the court directed the hearing to proceed upon the merits of the cause, without regard to the aforesaid collateral application. After the disposition of the cause upon the general issue, an order was granted, August 30, in relation to the aforesaid collateral motion, that the first report made by the appraiser be vacated and set aside, unless rectified by consent of the respective

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The Lynnhburg.

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parties, and that no delivery of said appraised cargo be made to any of said claimants thereunder until such appraisement be corrected and filed anew, with the condition appended to such order that if the cargo so appraised, or any part of it, shall have been bonded and delivered under such bail bonds by the United States marshal to the claimants, or any of them, and yet remains in their possession or under their control, the same be forthwith replaced in custody of the marshal, subject to the further order of the court.

A copy of that order was served on the proctors of C. T. Wortham & Co. by the libellants, with notice of the motion now under consideration, for carrying the order into effect. The motion was brought to hearing between those parties on the 3d of October instant. No appearance was made on the part of Brown Brothers & Co. on this application, nor is there any evidence given that they received notice thereof except an affidavit made by their proctor of August 30, 1861, to the effect "that the first appraisement by Ruch, the appraiser, had been fair and just, and that Brown Brothers & Co., immediately on its completion, and before anything was heard by them of the alleged error, on receiving the amount for which they held this part of the cargo from Messrs. Wright, Maxwell & Co., absolutely gave up, parted with, and delivered the same, in perfect good faith, and in reliance that their title to it had become perfect by such bonding and the delivery of it to them, and have not since had the same or any control thereover whatever;" which affidavit was offered to the court, on the part of the libellants, as presumptive evidence that the supposed ownership and title of Brown Brothers & Co. had been assigned or transferred to the other claimants, C. T. Wortham & Co., or their agent, who represented their interests in this suit.

The facts in proof on the part of the claimants show that neither they nor their sureties, nor the marshal, are in possession of the coffee so captured and discharged on bail, and that, accordingly, it no longer remains in custody of the court, or subject to its disposal by summary order. On the contrary, the surrender of it upon appraisal, and at the sum appraised, was made with the full assent of the United States attorney, and so long after the appraisal had been made, and its terms known to the libellants, that there is no equity on their part to demand its surrender by, or dispossession from, purchasers thereof in good faith. The only remedy the libellants can make title to at this time, in respect to the cargo, is to hold the claimants personally responsible for the value or products of the same, at the time the



same was so released on stipulations or bail. The sureties to these stipulations or bonds can be made liable to the libellants for no more than the amounts for which they stipulated or became obligated, nor will the amount of that liability be determined on summary motion, but is more appropriately ascertained by the court in due course of procedure, by appropriate action or suit.

Property seized as prize may be pursued into the hands of all persons who become possessed of it, *in rem*, or, if its proceeds are brought into court, by monition. It matters not whether the prize goods remain in kind, or have been disposed of *bona fide*, at private sale or by auction. The holder of the thing, or of its proceeds, may be compelled, by monition, to deliver the same into court, to be there disposed of according to the rights of the captors. (The Pomona, 1 Dods., 25; The Herkimer, Stewart's Adm. Rep., 128; The Alligator, 1 Gall., 148; 1 Wheat., Appendix, 3, 4.) And the court may proceed in these cases upon its own authority, *ex officio*, as well as upon the application of parties, and enforce its decrees against persons having the proceeds of prize in their hands, when insufficient stipulation has been taken on a delivery on bail. (1 Wheat., Appendix, 4.) Citations, monitions, and warrants, are the processes by which the jurisdiction, of courts proceeding according to the course of the civil law, is exercised, and they are to be employed in courts of the United States under the process act of Congress of September 29, 1789, sec. 2. (Manro v. Almeida, 10 Wheat., 473.)

Brown Brothers & Co., although not called upon specifically by notice in this motion, or otherwise, therefore come within the scope of the powers which the facts disclosed by the affidavits require the court to exercise, as these claimants are alleged to have had delivered to them the aforesaid 504 bags of coffee, at a valuation, in the appraisement, below the actual worth of the articles.

The libellants are accordingly entitled to sue out monitions against the claimants, C. T. Wortham & Co., or their agent, and against Brown Brothers & Co., to pay into court the difference in amount between the proceeds or value of the bags of coffee delivered to them respectively, and the sum of the stipulations or bonds given by them respectively, on such delivery of the coffee to them respectively, on bail. Orders can be taken in court accordingly.

## THE BARK PIONEER AND CARGO.

The vessel and cargo having been condemned, and an appeal taken by the claimants to the circuit court, this court, on evidence that the cargo was perishable, and the vessel and cargo liable to deterioration, and on the consent of all the parties, directed the prize commissioners to sell the vessel and cargo at public auction, and to bring the proceeds of sale into court.

The act of March 3, 1849, (9 U. S. Stat. at Large, 378, § 8,) commented on, in respect to the disposition of the proceeds of a sale by a marshal.

(Before BETTS, J., October 26, 1861.)

[It appearing to the court that the cargo of the prize vessel herein is of a perishable character, and that both vessel and cargo are suffering, and will be subject to much deterioration in their condition and value, pending the appeal of the claimants from the decree of condemnation thereof, it is ordered that the prize commissioners of this court do forthwith take into their possession the said bark Pioneer, and her cargo laden on board, and procure the unlading and storage of said cargo, if the same or either be requisite for its present safety or advantageous sale, and that the said commissioners do then, and without delay, proceed to make sale of said vessel and cargo at public auction on due notice, unless a consent shall be filed herein, executed by all the parties, that such sale may be otherwise effected by said commissioners; and it is further ordered, that the proceeds of sale, deducting therefrom the necessary expenses thereof, and of such unlading and storage, if any, be forthwith brought into court by the said prize commissioners, to abide the further decree in this suit, together with a report of their proceedings herein, and a detailed account of their sales and expenses, to the end that the court may make such further direction as to the investment of such proceeds, pending this suit, as it may deem proper.]

BETTS, J.: The counsel for the respective parties moved the court for the decree above stated, in order that the funds might be disposed of by the court intermediate the hearing on appeal, and probably having also in view the object of bringing before the appellate courts the propriety of the distribution made here of the cargo condemned, should its confiscation, as decreed by this court, be sustained in the courts above.

The prize rules provide for a commission of appraisement, to ascertain the value of perishable property captured as prize, (rule 25;) and there would seem to be reasonable cause for allowing it in the present case, because there may be doubt, under the act of Congress of March 3, 1849, sec. 8, (9 U. S. Stat. at Large, 378,) whether the court can

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The Argonaut.

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exercise any authority over the funds produced by a marshal's sale, and whether they must not be deposited absolutely in the United States treasury, only to be obtained therefrom by some mode of proceeding independent of the direction and practice of the court. The prayer of the proctors of the parties, supported by their mutual consent in writing, was, therefore, assented to, that the funds might be rescued from a perishing condition, and be so placed as to be made directly available, under orders of the court, to the parties interested in them, without injurious procrastination and expenses.

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## THE SCHOONER ARGONAUT AND CARGO.

Vessel and cargo restored as neutral property, on a lawful voyage, but without costs against the captors, there having been probable cause for the arrest, the vessel having attempted to enter a blockaded port to obtain necessary supplies.

An excuse of that kind is looked upon with distrust by prize courts.

(Before BETTS, J., October, 1861.)

BETTS, J.: This cause was submitted to the decision of the court by counsel, on the pleadings and proofs, and a brief oral statement of the points in controversy.

The Argonaut was captured by the United States war steamer *Susquehanna*, September 13, 1861, off Hatteras inlet, and sent into this port in charge of a prize crew, and was libelled by the United States attorney as prize of war. The claimants filed separate answers and claims to the suit, each alleging that they are British subjects resident in Nova Scotia, and that the vessel and cargo are owned by them and both are British property, and neither is subject to arrest or condemnation as prize of war; and they invoke their own affidavits, appended to the proceedings and the evidence taken *in preparatorio*, in support of their defences.

The proofs show that the vessel and cargo were neutral property, and it is not made a point of contestation by the libellants, since the proofs are in, that the voyage was honest and fair in its inception, and that neither vessel nor cargo are, upon the facts before the court, subject to confiscation; but, on the part of the United States, it is insisted that the direction of the vessel, and her apparent purpose when she was arrested, denoted an intention to enter a blockaded port, so far, at least, as to well warrant her arrest and to impose upon her the necessity of establishing the justifiableness and innocence of her proceed-

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The Argonaut.

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ings. On the other side, it is urged that she deviated from the regular course of her voyage for necessary causes, and stands, on that account, exonerated from all blame and all reasonable grounds of suspicion.

The evidence given by the master, mate, and seamen of the captured vessel, on the preparatory examination, is entirely consistent and clear, that the vessel was laden and despatched at Nova Scotia on a voyage to Key West, and was manned by a British crew and laden with a British cargo, not contraband, and that the voyage was faithfully pursued until, in its regular course, the vessel became short of water for the crew, and also of burning-fluid to supply her lamps, a portion of the fluid, shipped in quantity sufficient for the purpose, being found, when at sea, defective in quality and incapable of being used as a light, so that the vessel could not be safely navigated at night. The vessel deviated from the true course of her voyage about fifteen miles, and attempted to obtain from other vessels the supply needed for her wants, and, in so doing, was seized by the United States vessel-of-war.

I perceive no reason to doubt, on all the facts and circumstances in proof, that the master of the vessel and her supercargo acted under an honest conviction that the necessities of the vessel required she should obtain the supplies lost to her in order to continue the voyage safely, and were governed in their proceedings by that motive, and not by an intent to violate the blockade of the port which she sought to enter and near which she was seized. Although the condition of the vessel relieves her from confiscation because of the effort of the master to enter a blockaded port for the purpose of relieving her necessities, yet excuses of that kind are looked upon with marked distrust by prize courts, who scan them cautiously. Lord Stowell holds that nothing but a high necessity justifies an attempt to enter a blockaded port, (*The Hurtig Hane*, 2 Ch. Rob., 124,) and that slight and plausible excuses will not be listened to, (*The Fortuna*, 5 Ch. Rob., 28;) and the want of provisions is referred to as a simulated reason often set up in excuse of the offence. Still, when the necessity is actual and is the motive which governs the conduct of the master, the vessel will be exonerated from the severe penalty which the act of breaking a blockade incurs.

I think the proofs fairly make out such a case for the vessel in this instance, and that, accordingly, the vessel and cargo should be restored to the claimants; but I think there was probable cause for arresting the vessel in an attempt to make a blockaded port and sending her in

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The Tropic Wind.

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to make good before the proper court the justification she alleged for her proceedings.

The judgment of the court, accordingly, is that the vessel and cargo be restored to the claimants, without costs against the captors.

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THE SCHOONER TROPIC WIND AND CARGO.

It is competent for any person to take possession of property seizable as prize when found within the jurisdiction of the court.

The vessel and cargo were seized in Hampton Roads, near Fortress Monroe, by Major General Butler, of the army, and sent to New York and there libelled as prize: *Held*, that the arrest was legal, and the suit regularly instituted.

Claimants of property seized as prize, who complain of irregularities, delay, and acts of negligence on the part of the captors, must proceed according to rule 23 of the standing prize rules—that is, by libel and monition, and not by special motion—to discharge the arrest.

Vessel and cargo, libelled for having been fraudulently employed by the master in unlawfully communicating with the enemy, released.

There is no public or municipal law which inhibits a neutral vessel, on a lawful voyage from Washington city to Halifax, from sailing at night on the Potomac river.

The questions as to what are considered in prize law contraband letters or despatches when carried to an enemy, and as to what personal intercourse with the enemy is allowed by the prize law, discussed.

The seizure having been made on probable grounds of suspicion, the vessel and cargo were restored without costs or damages against the captors.

(Before BETTS, J., November, 1861.)

BETTS, J.: This vessel, her equipments and lading, were seized in Hampton roads, near Fortress Monroe, on the 25th of July last, by order of Major General Butler, of the United States army, commanding at Fortress Monroe, the schooner then lying near that fortress. The vessel was sent to this port upon that seizure, and was here libelled, August 5, as prize in the above-entitled suit.

The British consul, resident at this port, intervened, and filed a claim and answer, in his official character, "for the interests of the owners of the whole of the cargo of the above schooner as the property of British subjects," August 27, and on the 8th of October James T. Farrington and Theodore Farrington filed their claim and answer and exceptions, as owners of the vessel, to the libel. The test oath appended thereto supported the allegations of the pleadings that they are British subjects and owners of the vessel and carriers of the cargo, both of which are the property of British subjects.

These facts were not controverted on the trial by the United States attorney.

The pleadings took direct issue upon the allegations of the libel that cause of capture of the vessel or cargo as prize of war existed in the

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The Tropic Wind.

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facts or law of the case, and also averred that the vessel had been improperly ordered to this port for trial. That branch of the case was also made the foundation of special motions to the court to discharge the arrest of the vessel and cargo, because of irregularities in their seizure, in their not being transmitted to the District of Columbia for prosecution, and in other acts of omission or negligence on the part of the captors, in relation to the papers found on board of her when seized, and other proceedings consequent thereupon. These collateral subjects were, on the hearing, blended with the main case and all discussed together. The decision of the court upon the merits of the case will render it unnecessary to notice more particularly these subordinate points.

In my opinion the arrest of the property seized was legal, and the suit was regularly instituted. It was of no importance to the right of action that the capture should be made by a marine force and officers of the revenue service, or other authority particularly charged with the enforcement of prize law at sea. It is competent for any person to take possession of property seizable as prize when found within the jurisdiction of the court. (The *Johanna Emilie*, 29 Eng. Law and Eq. Rep., 562; The *Rebeckah*, 1 Ch. Rob., 227; *La Rosine*, 2 Ch. Rob., 372.)

The case of the *Amiable Isabella*, (6 Wheat., 1,) captured at sea under Spanish colors by an American privateer commissioned to capture English vessels, or to recapture American vessels which had been seized by British cruisers, heard on appeal in the Supreme Court in February term, 1821, presented the question directly, whether in a prize suit the action could be maintained without proof that the captors had lawful authority to make the capture in question. The point was carefully argued by distinguished counsel. The opinion of the court, delivered by Story, J., disposed of the principle, and settled definitely the practice. The court say, (p. 66 :) "A preliminary question was raised that the libel ought to be dismissed because the capture was made without public authority and by a non-commissioned vessel. Whether this be so or not, we do not think it material now to inquire. It is a question between the government and the captors, with which the claimant has nothing to do. If the captors made the capture without any legal commission, and it is decreed good prize, the condemnation must, under such circumstances, be to the government itself. But in any view the question is matter of subsequent inquiry, after the principal question of prize is disposed of; and the government

may, if it chooses, contest the right of the captors by an interlocutory application, after a decree of condemnation has passed and before distribution is decreed. The claimant can have no just interest in that question, and cannot be permitted to moot it before this court."

This doctrine disposes as well of the particular exception included in the answer of the owner claimants as of the special motions made to avoid the proceedings because of alleged irregularities and want of authority in army officers to arrest the vessel, or of the sending her into this district for trial without transmitting with her the papers found on board. All these questions cease to be personal with the seizing General, and affect the United States only as vested with the whole interest in suit upon the capture, as a droit of admiralty, to their exclusive use.

The relief to claimants of property seized and brought into port as prize, when any unwarrantable delay is made by the captors in bringing it to adjudication, is provided for in rule 23 of the standing prize rules. (1 Wheat., Appendix, 500.) This established course of proceeding supplants the use of special motions resting on *ex parte* affidavits, as in courts of law and equity, and puts the claimants to the employment of precise allegations by libel, enforced by process of monition. Accordingly, the special motions addressed to the court in this behalf must be disregarded.

The merits in this suit rest upon the issue whether the vessel and cargo had been fraudulently employed by the master, prior to her capture, in sending despatches to, or in other unlawful communication with, the enemy.

The vessel and cargo are British property. On the 19th of April she came into the port of Richmond, from the port of Nassau, N. P., and had there laden on board a cargo of tobacco, bound for the port of Halifax, Nova Scotia; and sailed, with such cargo, from Richmond for her port of destination, on the 14th of May last, with a crew of twelve men, including a mate. She was captured by a vessel-of-war of the United States, in Hampton roads, for an alleged violation of the blockade then existing, by wrongfully coming out of the port of Richmond, and was sent to Washington, and there libelled, tried, and convicted for the offence before the United States district court, in the term of June last. The sentence was remitted by the government; and on the 21st of June the vessel and cargo were delivered up to the master, on such remission, by order of the court which had condemned her; and on the 23d or 24th she proceeded, under the charge

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of the master and four colored men shipped at Washington, on her voyage thence for Halifax. It seems that none of the ship's company on board at the time she sailed from Richmond remained with her on her release at Washington, except the master.

On coming down the Potomac river, on the 24th, the schooner was brought to by the United States ship-of-war Pawnee, before she reached Aquia creek, and a notice was indorsed upon the certificate of release granted her by the court "not to enter any port in Virginia, or south of it, nor to sail at night in the Potomac river." Of course, the prohibition could not be observed literally, because the vessel must necessarily continue within a *port of Virginia* during the period of her transit to sea. She was authorized to pursue that track by force of her discharge from arrest, and the right could not be taken away by any subsequent restriction or construction of the discharge at the arbitrary discretion of a naval officer. The palpable meaning of the warning must have been that she should afterwards avoid seeking any port in Virginia for the purpose of commercial intercourse with it, she being entitled to an undisturbed passage through and out of the waters of the State. Nor is there any legal force in the other qualification attempted to be imposed on the freedom of the vessel—"not to sail in the night on the Potomac river"—because there is no public or municipal law which inhibits the vessel of a neutral power, lawfully navigating that arm of the sea, to continue on her passage at discretion. Had the evidence shown a violation by the vessel of this prohibition, she or her owners would not have incurred forfeiture thereby or liability to arrest or detention. But, as she came off short-handed, with only three colored seamen and no mate, the daily entries in the log, showing that the vessel anchored each night on her passage down the river, would be as satisfactory evidence of the true manner of her being sailed as the rough recollection of the sailors; and, when no probable motive for misrepresentation is established, the log would prevail, as of more reliable probability of accuracy as to those facts.

The main accusation upon which the capture was made, and that relied on by the prosecution for condemnation of the vessel, is, that she, in fraud of her privilege as a neutral, communicated with the enemy, furnishing despatches and other unlawful aid and comfort in furtherance of the hostilities carrying on against the United States.

Sir William Scott declares that the fraudulent carrying of despatches of the enemy by a neutral is a criminal act, which will lead to the



condemnation of the neutral vessel. (The Atalanta, 6 Ch. Rob., 458, 459.) In the extended statements, in that case, of the principle on which the offence is founded, and the penalty of confiscation imposed on the vessel as the guilty instrument, Sir William Scott carefully forbears pronouncing what might be the consequences of a *simple* transmission of despatches, (Id., 454.) *i. e.*, (it is presumable,) when no other purpose is fastened upon the agent than his being bearer or forwarder of written communications to or from an enemy, without regard to their contents, or the promotion of injurious objects thereby. Mr. Wheaton, in his adoption of the doctrine laid down in the case of the Atalanta, seems to limit its force to acts fraudulent and hostile in their nature. (Wheat. on Captures, ch. 6, section 10.) Sir William Scott interprets "despatches," treated of in the decisions as warlike or contraband communications, to be "*official communications of official persons, on the public affairs of the government.*" (The Caroline, 6 Ch. Rob., 465.) The cases to which he refers, and from which that definition was deduced, were essentially of that character, and, moreover, generally contained some marked element of fraud, culpable concealment, or duplicity, or evasive subterfuge. (Id., 461, note.) The Madison (Edw., 225) indicates clearly that the court only regards as criminal in a neutral vessel the carrying of letters or despatches of a public nature from or to a belligerent port. (The Rapid, Edw., 228.) The like tone of sentiment prevails in like cases with the same eminent judge, and he manifests a strong disposition to exonerate a vessel from responsibility for transporting private letters between individuals, and to presume they were of an innocent kind, in the absence of all proof to the contrary. (The Acteon, 2 Dods., 53, 54.)

In the present case the libellants give no further proof respecting the transmission of despatches on board the Tropic Wind, to persons in Virginia, than that a small box was put ashore by the master, containing some newspapers and a letter directed to his wife, who resided at Richmond. Upon that proof the court would not presume the letter was of a contraband nature or conduced to compromit the neutral character of the vessel; but evidence given by the master in his sworn protest, admitted with the proofs in the cause, shows that the box contained only a present of a few sea-shore bells, some newspapers, and a letter from the master to his wife.

The stopping of the vessel at the mouth of the Rappahannock, anchoring there, or communicating with the shore by means of its boats, were none of them acts in culpable violation of her obligations

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of neutrality towards the United States. She was still navigating within the limits of our ports, and not proceeding inwards from the high seas towards a blockaded port. In her position there was no inhibition to her holding personal intercourse with the enemy for innocent purposes and objects. She might obtain necessary sea stores, material supplies, and those other aids in her equipment, indispensable to making the lawful voyage she was pursuing; and a sufficient complement of men to complete her voyage would be fairly included. She was released at Washington, free to prosecute her voyage, but destitute of an adequate crew, (having been carried to that port with twelve hands, and departing with four only, including a cook.) The proofs do not show that she did more than to make appropriate inquiries and exertions to obtain these supplies, and, accordingly, nothing is fastened upon her doings which constituted a breach of her duty towards the United States, as a neutral and friendly vessel within their waters.

The evidence of the colored informers, upon whose charge the vessel was seized, gave probable grounds of suspicion that she harbored the intention to go up the Rappahannock to Fredericksburg, and there make sale of the colored men, or commit other acts, in intercourse with the enemy, prejudicial to the rights of the government, and in violation of her obligations as a neutral. The whole evidence, when disclosed, dissipates that suspicion, and a decree must be entered dismissing this suit, and ordering restitution of the vessel and cargo to the claimants, without costs or damages against the captors.

Decree accordingly.

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THE BRIG SARAH STARR AND CARGO. THE SCHOONER AIGBURTH AND CARGO.

The hostilities commenced against the United States by the seceded States have produced a state of war between the two communities, as consequent to which the United States are authorized to employ against their enemies the means of resistance and attack, by land or naval forces, which are justifiable under the law of nations.

A blockade of the ports of their enemy is one of such lawful means, and is incident to the war power, and may be imposed by the President *flagrante bello*, without any act of the legislature declaring it.

Property belonging to a neutral who is domiciled and carrying on trade at an enemy port, is enemy property. Traffic with the enemy is forbidden by public law. A sale of property during hostilities in an enemy port, by a person domiciled and trading there, to a neutral, does not pass the title, and the property still remains subject to capture as prize.

A neutral domiciled and trading in a belligerent port can neither hold title to property acquired there during war, nor confer it upon others, against the interests imparted by capture at sea to the adversary belligerent.

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There is nothing in the treaties of November 19, 1794, (8 *U. S. Statutes at Large*, 116,) December 24, 1814, (*Id.*, 218,) and July 3, 1815, (*Id.*, 228,) between the United States and Great Britain, which gives to a British merchant, resident in a port of the seceded States during the war, an immunity from the general principles of public law applicable to resident neutral merchants.

The act of July 13, 1861, (19 *U. S. Statutes at Large*, 255,) does not restrict the war powers of the United States. The confiscations provided for by the 6th section of that act, and by the act of August 6, 1861, (12 *U. S. Statutes at Large*, 319,) can be carried into effect by the prize courts of the United States, as respects property captured at sea.

The fact that a vessel carries clearance papers issued by the enemy, does not constitute, of itself, justifiable cause for her capture.

To constitute a blockade of a port, an adequate force must be stationed to render the entrance or departure of vessels into or from the port dangerous.

Further proof allowed to be given by the libellants on the question of violation of blockade.

Vessels and cargoes condemned as enemy property.

(Before BETTS, J., November, 1861.)

BETTS, J.: No facts brought into discussion in the first suit, or in that against the schooner Aigburth, heard concurrently with it, are made subjects of controversy, other than those relating to the existence and efficiency of the blockade of the ports of Wilmington or Newbern, or other ports of the Atlantic coast south of Cape Henry, at the times the captures were made. Both vessels and cargoes were seized and libelled by the libellants as enemy property, and also for having committed, or attempted to commit, a violation of the blockade of the above ports. The vessels are claimed as the property of Cowlan Gravely, a subject of the Queen of Great Britain, and a neutral in the pending war between the southern or Confederate States and the United States.

Various rights and titles to the cargoes of the respective vessels are set up, and sought to be maintained by the proofs given on the hearing of the causes. The facts in relation to the acts of the two vessels and the cargoes shipped on board were substantially these: The brig Sarah Starr, with her cargo, was arrested by the United States ship-of-war Wabash, twenty-five or thirty miles from the bar at Cape Fear river, on the 3d of August last, the day she left port from Wilmington, in North Carolina, bound to Liverpool.

The schooner Aigburth was arrested forty miles off the coast of Florida, opposite Fernandina, by the United States ship-of-war Fal-mouth, on the 31st of August last, bound from Matanzas, Cuba, to New Brunswick, Nova Scotia. Gravely claimed to be sole owner of the two vessels, and to be also the sole owner of the cargo of the Aigburth, and interested in that of the Sarah Starr; he asserting his sole ownership of one-fourth part thereof. The Aigburth was laden at the port of Newbern, North Carolina, in the month of July last, with cargo the product of that country, and sailed from Hatteras inlet the 28th day of July aforesaid on a voyage to Cuba, and back to a port in the United States or British provinces.

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The Sarah Starr and The Aigburth.

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The formal paper titles in proof are sufficient, *prima facie*, to vest the ownership of the two vessels in Gravely, the claimant.

It appears, from the register of the Sarah Starr, granted at Newport, Rhode Island, December 21, 1859, that the vessel was owned, in equal one-third parts, by Charles B. Eddy, of Fall River, Massachusetts, William J. Munro, of Charleston, South Carolina, and George C. Munro, of Newport, Rhode Island; that she was named the *Sarah Starr, of Charleston*; and that a permanent register was issued to the owners at the port of Charleston, South Carolina, June 17, 1859. On the 10th of May, 1861, two of the above part owners conveyed their entire two-thirds interests in the vessel for the consideration of \$100 to their co-owner, George C. Munro, who, on the 1st day of July thereafter, describing himself to be of Wilmington, State of North Carolina, by bill of sale, with warranty, sold and conveyed the vessel by the name of the *Sarah Starr, of Charleston*, South Carolina, to the claimant, Cowlan Gravely, for the consideration of \$10,000; and duly acknowledged such conveyance, upon the same day, before a notary public at Wilmington. The claimant was then a British subject, resident at Charleston, and carrying on business at that place as a merchant. The consideration money was to be paid, \$3,000 in cash, for which a note of the purchaser, at a short credit, was accepted, the "residue out of the freight to be earned by the brig upon her arrival at Liverpool," to which port she was to be forthwith despatched with a cargo. The personal responsibility of the claimant, and the freight money to be earned, was asserted in the bill of sale to be adequate security for the purchase-money, and, for that reason, that no lien or incumbrance on the vessel, by mortgage or other express pledge, was reserved. On his examination, on the 19th of August last, *in preparatorio*, George C. Munro testified that no portion of the consideration money had been paid by the purchaser to the vendor. The agent of the claimant, however, states, in an affidavit made on the 11th of September, 1861, before the British consul in Charleston, outside the suit, that the note had been paid since its execution. Gravely alleges, in his claim and answer, that, as between him and George C. and William J. Munro, he has rights in one-fourth of the cargo, and, generally, that he is owner of the brig and interested in her cargo.

The brig was laden with naval stores, the products of that region of country, consisting, upon the manifest, of spirits of turpentine, resin, crude turpentine, and beeswax, all claimed by the two Munros, (except fifty barrels laden by Thomas Evans.) The personal residence of

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*The Sarah Starr and The Aigburth.*

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Eddy and William J. Munro still remains as it was when they assigned the vessel to their co-owner, George C. Munro; and that of Evans was at Wilmington, North Carolina. George C. Munro was born in the State of Rhode Island, and is married, and a householder in Newport, in that State, where his wife and family reside; but he and his brother have carried on trade and mercantile business in copartnership for four or five years past in and from Wilmington, North Carolina, and Charleston, South Carolina, by remaining in those States, superintending and conducting such business personally, during the healthy season of the year, and returning thence and remaining, with their families, in Rhode Island, through other portions of the year. George C. Munro was in Wilmington, so transacting the business of the firm, before and at the time the cargo in question was purchased and laden on board the Sarah Starr, and he came out of that port with the cargo in this suit, and as a passenger to Liverpool on this vessel. The two Munros claim that part of the cargo as joint owners. George C. Munro was examined on the standing interrogatories in the cause as such passenger; and both claimants set up the same facts in their test affidavits appended to their claims, and accepted by the libellants as evidence in the suit.

On or about the 23d of July last the claimant, George C. Munro, heard a rumor at Wilmington that a vessel-of-war of the United States had notified the officer in command of the confederate fort at the mouth of the port that it was blockaded by the United States, and that vessels therein had fifteen days from the time of its blockade to depart thence with their cargoes. The Munros knew, before the sale of the vessel to Gravely, that war existed between North Carolina and the United States, but George C. Munro testifies that he did not know that the port was blockaded in fact.

The schooner Charlotte Anne, of North Carolina, was owned by James E. Howland, of that State, and Stephen D. Doar, of South Carolina, and, on the 8th of July, 1861, was sold and conveyed by them, for the consideration of \$2,500, to the same Cowlan Gravely, of Charleston, South Carolina, who took possession of her as his own property, and had her laden at Newbern, North Carolina, with a cargo of produce purchased there, to go thence to Cuba, and back to a port in the United States or British provinces. She proceeded to sea on the 28th of July, then under the name of the Aigburth; made her outward voyage to Cuba, and, returning thence, when off Fernandina, on the coast of Florida, was captured, on the 31st of August last,

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The Sarah Starr and The Aigburth.

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by a ship-of-war of the United States, and was sent to this port with a prize crew, and libelled in this court on the 13th of September as prize of war. The only claim interposed to this vessel and cargo is that put in on the part of Gravely.

It remains equivocal, upon the evidence, whether any other consideration, on the purchase of the Sarah Starr, passed from her claimant Gravely to Munro than his promissory note for \$3,000 on a term of credit, and bills of exchange drawn by him on her freight, or whether a payment of any sum whatever has been made on such alleged sale; as George C. Munro, on his examination *in preparatorio*, denies having knowledge of it, and the payment is only averred generally in an *ex parte* affidavit made by an agent of Gravely two months or more subsequent to the sale. The purchase-money on the sale of the Aigburth to the claimant is receipted in full to him by the vendors on the day of sale. No proofs are before the court of other titles to the cargoes in either vessel than what is asserted in the claims of the Munros, Eddy, and the claimant Gravely.

Some of the cardinal propositions of law upon which these suits and defences depend are involved in other actions which have already been passed upon by this court, and are now on review in the Supreme Court upon appeal. The conclusions embraced in those decisions declared by this court will, accordingly, be maintained until they shall be changed by the judgment of the Supreme Court.

The hostilities commenced upon the United States by the seceded or Confederate States of the south have produced a state of war between the two communities, as consequent to which the United States are authorized to employ against their enemies the means of resistance and attack which are justifiable under the law of nations, by land or naval forces. A blockade of the ports of their enemy is one of such lawful means, and is incident to the war power, and may be imposed by the President *flagrante bello*, without any act of the legislature declaring it (The Rolla, 6 Ch. Rob., 364; 3 Phillimore's International Law, 383, § 288; ) a *blockade* and a *siege* being equivalent acts for a like object, that of the reduction of an enemy by force of arms. (Wheat. on the Law of Nations, 137, 138; Wheat. on International Law, 539, 540.)

Both of these vessels and their cargoes, so far as claimed, were enemy property within the principles of public law. The sale of the Sarah Starr was negotiated and made by George C. Munro, when he was a merchant trading in an enemy port, to Gravely, also domiciled

and carrying on trade in such place. That sale was unlawful as to Munro, even if, as he contends, he was then a resident of a loyal State, because it was in fraud of his obligations and duties towards his own government. Traffic with the enemy was forbidden by public law. (Duponceau on War, 24; Chitty's Law of Nations, 1; 1 Kent's Comm., 66.) The cargo claimed by the Munroes was purchased in a like port, and consisted of enemy products. The remainder of the cargo, shipped by Evans, was obtained at the same place, and he was also a resident there. If Gravely had an interest in any of the cargo, it is not proved that he had acquired a vested property, or more than an optional privilege to take it on its arrival at Liverpool; and, at all events, it must have been obtained, if any vested interest passed, through purchase or trade, from George C. Munro, a domiciled dealer in the enemy country at the time, and, as such, himself an enemy. (Westlake on International Law; 101, Law Library, p. 49.) The property would not pass out of Munro by such sale, and it remained, notwithstanding, liable to seizure *in transitu* at sea. The vessel is confiscable because, in the eye of the law, business intercourse with an enemy, inconsistent with actual hostility, is equivalent to trading with such enemy. (The Rapid, 8 Cranch., 162, 163.) These reasons all concur to bring the present case within the doctrine laid down in the antecedent decisions, that loyal citizens or neutrals who trade with an enemy, or have a mercantile domicile in an enemy country, are regarded, in the prize courts, in their commercial dealings and transactions there, as enemies, in relation to vessels and cargoes owned by them and captured at sea.

With respect to George C. Munro, the direct vendor of the vessel, and the purchaser, in North Carolina, of the cargo claimed by him and his partner, and to Gravely, who claims the vessel, each had, indubitably, a trading or mercantile domicile in the enemy's country, at the period of the transaction in question, and other and further than in the special occurrence of the sale of this vessel and the lading of cargo on her for the voyage in question. William J. Munro was, likewise, a resident in the Confederate States for commercial purposes; both partners, apparently, upon the proofs, having their sole business domicile, in carrying on their copartnership operations, for a period of years prior to the insurrection and since, within those States. According to a brief but comprehensive summary of the law of prize relative to inhabitations of that character, drawn up by Judge Story, with ample support of authority from the ancient and modern books, "persons who

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reside in a foreign country for purposes of trade are deemed inhabitants of that country by foreign nations, and the character of each changes with that of his country ; in peace he is deemed a neutral, in war an enemy ; and his property is dealt with accordingly in prize courts." (4 American Encyclopedia, App., 615, art. Domicile.) Thus, in *Hogsheads of Sugar v. Boyle*, (9 Cranch., 191,) the Supreme Court decided, in a prize case, that the claimant, a neutral, by his actual residence in Denmark, yet had a *national character of trade* by means of his relationship to the procurement of the cargo captured, which was shipped from an enemy port; and the cargo was, accordingly, condemned.

Furthermore, the sale of the Sarah Starr by Munro to Gravely was, under the proofs, manifestly colorable, and resorted to for the purpose of enabling the Munroes, under that cover, to ship their property from an enemy country to a neutral market, in avoidance of the rules of public law which inhibit such commerce to either belligerent. (3 Philimore's International Law, 603, sec. 484, and notes.) That offence on the part of the Munroes, if their true residence and citizenship was, at the time, out of the Confederate States, and in Rhode Island, subjected the property to seizure and confiscation. The cases are unequivocal to this proposition, coming from an early source in English jurisprudence, and fully confirmed in the American courts.

The *Bernon* (1 Ch. Rob., 102) was the case of a vessel purchased in France, during the war with England, by an American then resident in France. Sir William Scott regarded those circumstances as so suspicious that he required clear proof of the *bona fides* of the dealing, and that the vessel was not to be employed to the advantage of an enemy, and, for want of such evidence, he condemned the vessel. A series of decisions reiterated the doctrine before the same judge, and applied it rigidly to American neutrals, under varying phases of facts, all upholding the principle that a residence by a trading person, for commercial purposes, in an enemy country, constitutes a domicile, imparting a national character to the residence, although it be fluctuating and temporary in its duration, and *quasi* incorporeal and not personal. (The *Harmony*, 2 Ch. Rob., 322; The *Indian Chief*, 3 Ch. Rob., 17; The *Dree Gebroeders*, 4 Ch. Rob., 233; The *Danous*, 4 Ch. Rob., 255, note 2; The *Diana*, 5 Ch. Rob., 60; The *President*, Id., 277.) Many of the cases proceed upon the recognition of the doctrine, "that commerce by a citizen or subject with an enemy, is a criminal transaction, on the common principle that it is illegal



in any person owing an allegiance, though temporary, to trade with the public enemy." These doctrines are maintained by the successors of that eminent jurist in the English prize court, and applied with undiminished vigor in cases of dealing and trade in ships and merchandise, equally in cases directly preceding the commencement of hostilities and in transactions during actual war; and no distinction is made, in their application, between domiciled neutrals and natural subjects. (The Abo, 1 Spinks' Prize Cases, 42; The Johanna Emilie, Id., 16; The Ernest Merk, Id., 98; The Christine, Id., 82.) So, if a neutral makes purchase of a vessel, in an enemy country, just prior to the breaking out of war, the *bona fides* of the transaction must be made out by indisputable proof, in order to protect her from capture, (The Rapid, 1 Spinks, 80,) particularly when the purchase has been made upon the personal credit of the buyer, to be satisfied on the arrival of the vessel in the neutral country; (The Christine, Id., 82;) and the *onus* of proving the actual payment of the consideration money is, in such case, laid on the claimant. (The Ernest Merk, 1 Spinks, 101.) A sale of a vessel to a neutral, *flagrante bello*, leaving a portion of the purchase money charged upon the vessel, or unpaid by the vendee, leaves the property in the belligerent, and subject to condemnation in a prize court, as enemy property. (The Ballica, 1 Spinks' Prize Cases, 273, 274.)

The American authorities are equally explicit, that a neutral, even enjoying the privileges of consul, domiciled and trading in a belligerent country, is, in war, deemed a belligerent, and his acts are clothed with the character of one of its subjects; and he can neither hold title to property acquired in such country during war, nor confer it upon others, against the interests imparted, by capture at sea, to adversary belligerents. (The Venus, 8 Cranch, 253; Hogsheads of Sugar *v.* Boyle, 9 Cranch, 191; The Ann Green, 1 Gall., 284; The San José Indiano, 2 Gall., 268; The Mary and Susan, 1 Wheat., 54, note f; 1 Kent's Comm., 72, 75; Wheat. Internat. Law, ch. 1, sec. 17. See also Manning's Law of Nations, 7.)

So far, then, as the proofs disclose the actual facts attending the acquisition of the cargo placed on board the Sarah Starr in North Carolina, it was wholly the property of the Munroes, acquired by them there jointly during the war, and is lawful prize of war on both considerations—that they purchased it in an enemy country, and that they, at the same time, had a commercial domicile there. The vessel, on general principles, is placed in the same predicament. It was sold

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to Gravely, all parties being disqualified by their relations to this country to sell or purchase in a belligerent State, for the purpose of covering property from the operations of the law of war; and the transaction thus became, between them, one in fraud of the United States.

These observations apply equally to the title set up by Gravely to the schooner Aigburth. She was sold to him by resident enemies, and he acquired her and loaded her for foreign trade whilst he was a domiciled trader in the enemy country; and his position as a neutral was evidently employed as a cover to an illegitimate trade. The cases above cited stamp such a procedure as a fraud upon the belligerent rights of the United States and as constituting good cause of forfeiture of the vessel, and of the property on board of her, owned by him. His being a native British subject affords no protection against these consequences. He was mixed personally, and in his responsibilities, with the people with whom he maintained a commercial domicile. In his claim he represents himself to be of "England, merchant, but temporarily residing in Charleston, and a subject of her Britannic Majesty, and being the true and lawful and sole owner of the said schooner, her tackle, apparel, and furniture, and also owner of all the cargo on board said vessel." No other claim is interposed to the cargo than that of Gravely, and the bills of lading, noting the cargo as shipped to its owners, and being indorsed in blank, import the ownership of the cargo to be according to the claim.

The papers taken with the vessel show that the transmission of the outward cargo and the return one was made through the intermediation of the house of Fraser & Co., of Charleston, as agents of the claimant; and thus far the outside evidence supports the claim of ownership of this claimant in the cargo captured, because a prize court regards merchandise to be the property of the shipper or consignee, and not of the consignee, unless there be clear proof to the contrary. (The Abo, 1 Spinks' Prize Cases, 42) Certainly this will be the rule when no other supposed owner litigates the right of property. The return cargo, then, simply as enemy property, is liable to arrest at sea as prize, whether its destination be to the enemy port, or to one in a neutral and friendly country. No distinction is marked, in the cases, between the liability of property taken at sea, owned by a neutral who is stamped with the character of an enemy by his commercial residence and dealing in the enemy's country, and the native residents thereof.

Dr. Lushington comments upon the character of a neutral commer

cially domiciled in an enemy country in these terms: "There is no principle, I apprehend, so well laid down, no principle so generally true, as this: that whatever country a gentleman may belong to, if he is resident in and carries on trade for a period of time in another country, he must be taken, for the purpose of trade, to belong to that other country, and not to his original domicile." (The Johanna Emilie, 1 Spinks' Prize Cases, 16.) That vessel was owned by Rucker, a neutral, and the Hanoverian consul, resident in Riga, and was sold by his authority at Newcastle, and purchased by another Hanoverian, previous to a declaration of war; but the court held her to belong to Rucker, who, by his domicile, was an enemy, and condemned her as good prize.

It appears to me, therefore, in view of the rules of law applicable to the question, that the claimant Gravely, in the character of a neutral and a British subject by birth, was, within the purview of the public law, in his mercantile relations, an enemy of the United States at the time the two above-named vessels were captured, and that they, together with so much of their respective cargoes as belonged to him, are lawful prizes. The manifest principle of that jurisprudence divests the man acting in promotion of the interests of one belligerent, in its commercial, military, or fiscal operations, of all protection against the other, under the shield of foreign birth or allegiance, and stamps him with the character of the party whose ends his conduct subserves; and his planting himself as a resident within the dominions of an enemy, and there carrying on a traffic in vessels or merchandise tending to the benefit of the belligerent with whom he is domiciled, constitutes him an enemy of the other, and renders his property so acquired or used just prize of war.

A ground of defence and immunity in behalf of this claimant is, however, interposed, which, it is contended, gives him pre-eminent protection in both these suits. It is, that by the treaty regulations between the British government and the United States, of November 19, 1794, (8 U. S. Stat. at Large, 116,) the contingency in this case is provided for and remedied. The provision in that treaty is as follows, (p. 128:) "If at any time a rupture should take place between his Majesty and the United States, the merchants and others of each of the two nations residing in the dominions of the other shall have the privilege of remaining, and continuing their trade, so long as they behave peaceably, and commit no offence against the laws." The fur-

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ther terms of the stipulation do not come in question, as the government has not assumed to direct the removal of the claimant from its dominions by any express order or mandate. Other articles in that treaty and the subsequent ones of December 24, 1814, and July 3, 1815, (8 U. S. Stat. at Large, 218, 228.) stipulate mutually the privilege to merchants to come and depart on their business freely from the territories of each nation. These arrangements are also insisted upon as securing to the claimant an entire immunity in every part of the United States as a resident British merchant. The material stipulations above quoted form the main basis of the argument. They are, in terms, framed to meet cases of hostilities existing between the contracting powers themselves, and no way look to disturbances in places not governed by their respective laws. The *dominions* to which the treaties refer, in reason, must be territories subject to the control and regulation of the respective parties; for it is not to be intended that nations, any more than individuals, assume to stipulate in their compacts, in respect to individual privileges, against natural or physical impossibilities.

It is not only matter of notoriety, but the fact is verified by the official proclamation of the President of the United States, that, at the time the transactions occurred on the part of the claimant within these States, both of them were in open insurrection and revolt against the government and laws of the United States, and were united with the Confederate States of the south in flagrant war against the United States and its government. The territories of the two were occupied by armed forces, naval and military, in their service; and the authority of the United States and its laws were arrested and resisted, and could not be enforced by the civil power of the government. The seceded States assumed, by their public acts and declarations, to be a government independent of the Constitution and laws of the United States, and were endeavoring to maintain such independency by public hostilities and organized war. These incidents were notorious in North and South Carolina, and it is in proof in these suits that such condition of hostilities and public war on the part of those States was well known to the claimant. It must, accordingly, be presumed that he voluntarily continued his commercial domicile in that locality; and it is, moreover, to be implied from these proofs that the purchase of the vessels and the shipment of the cargoes in question were negotiated and made with the claimant under full knowledge of those facts, as well as that the United States had declared the ports

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of these States to be in a state of belligerent blockade. He is legally chargeable, under such circumstances, with knowledge that he had lost by his domicile there the character of a neutral, and become a portion of the enemy population, as well as that he had thus placed himself, and continued voluntarily, outside of territories then under the authority or dominion of the United States. He was as a citizen of the United States would be who should have taken a commercial residence in an Irish port, and there carried on his trade, knowing that such kingdom had revolted against Great Britain, and, by force of arms, prevented the home government regaining possession and control of her former dominion therein. The British authorities would, unquestionably, regard the claim of an American citizen, under the terms of the treaty, in such case as rescinded, or suspended, so long as the place of residence continued to be forcibly wrested by hostile power from the actual authority of the mother government by acts of open war.

It seems to follow, plainly, from these considerations, that the exemption urged by the claimant, in his capacity as a British subject, and under the provisions of the treaties referred to, affords no protection to him in either of these suits. The privilege he sets up under the 26th article of the treaty of 1794 is outside of the *casus fœderis*, which relates solely to the existence of mutual hostilities between Great Britain and the United States. The other stipulations in the respective treaties referred to are limited to a reciprocal liberty of commerce between the two nations and their subjects, and impart nothing beyond the mutual enjoyment, *within the laws and territories* of each, of the rights of peaceful intercourse and trade between two neutral and friendly communities. The compacts afford no shadow of color to the merchants of either party to disrobe themselves of their neutrality towards the other whilst enjoying such residence, and to employ themselves in the service and aid of belligerent powers who are carrying on hostilities against the one whose guarantee of free domicile is invoked. The treaties, in words, grant the reciprocal privileges of residence and commerce, "*subject always to the laws and statutes of the two countries respectively.*" (8 U. S. Stat. at Large, 124, art. 14; Ibid., 228, art. 1.) The natural sense of the arrangements would be regarded as conveying no higher advantages or immunities to alien friends than native subjects and citizens possess within the territories of the contracting parties. The alien friend clearly could not, under the reservation expressed in the treaties, carry on a trade inter-

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dicted by the local law. He could not smuggle cargoes, or engage in the slave trade, or fit out or arm within the country, vessels-of-war against friendly nations. The public law inhibits alike native citizens and friendly neutrals there domiciled from trading with the enemies of their own country, or with a friendly belligerent, in ports of such enemies, and from affording them aid or comfort there. (3 Phillimore's International Law, ch. 6, secs. 68, 74, 85; The Hoop, 1 Ch. Rob., 196.)

The grounds of defence considered and passed upon in previous decisions in this court will also govern in these suits. The seceded States and their inhabitants, during the prosecution of the war by them, are regarded as enemies of the United States, and neither in relation to the doctrines of public law nor the relevancy of municipal regulations are they now within territories under the dominion of the laws of the United States. The right of sovereignty in the general government continues unaffected over the seceded States, although it may fail in being enforced, except according to the rights of war, while the interruption of the powers of the civil magistracy shall continue.

A bar is also raised on the argument by the claimants to the jurisdiction of the court in these suits, because of the provisions of the act of Congress passed July 13, 1861. (12 U. S. Stat. at Large, 255.) It is insisted that this statute supersedes the rules of national law, and constitutes the sole law which supplies authority to the government to seize vessels or property belonging to insurgents in the seceding or Confederate States, and that, by just implication, it also establishes the doctrine that no power to arrest or confiscate such property is possessed by the government, except under the provisions of that act.

In the judgments of the court heretofore rendered in the various prize cases, and now under review before the Supreme Court, it was held, in effect, that the war subsisting between the United States and the Confederate States entitled the United States, under the rules of the law of nations, to prosecute it with all the authority and means lawful to be employed in a war between nations foreign to each other, and that the act of Congress above cited did not rescind or curtail that authority in respect to the inhabitants or property of the enemy States. Those judgments do not, in terms, cover the objections made in both of these suits, as the Sarah Starr was captured before all the provisions of the law went into effect. She was taken on the 3d of

August, and the President's proclamation to give full effect to the statute was issued on the 16th of the month; and therefore, if the notice given by the proclamation of the President was necessary to render commercial intercourse attempted to be carried on by this vessel or her owners unlawful, and subject her and her cargo to forfeiture, a legal cause of arrest and condemnation would not be furnished at the time she was seized.

But, in my opinion, the law in question was not intended to restrict or interfere with the war powers of the government. Its main purpose, disclosed by its title, is to provide for the collection of duties, and the "other purposes" will naturally be such as assimilate with or aid in effecting that end. (*The United States v. Fisher*, 2 Cranch, 386; *Beard v. Rowan*, 9 Peters, 301; 1 Kent's Comm., 461.) The first four sections of the act relate to securing duties on foreign commerce; the seventh section authorizes the President to employ other vessels than revenue cutters in enforcing the revenue laws; the eighth section places petitions for remission or mitigation of penalties or forfeitures under the like discretion of the Secretary of the Treasury as is given in the act of March 3, 1797; the ninth section enlarges the jurisdiction of the United States courts over proceedings for forfeiture as to places where the proceedings therefor may be instituted; the fifth and sixth sections designate the subjects of forfeiture and the places where seizures may be made. Thus the scope and manifest purpose of these enactments aim to break up commercial intercourse by and between loyal citizens and insurgents, and to cause all merchandise coming or going by land or water between the residents of these opposite sections of the United States to be forfeited, together with the vehicles conveying them. Obviously these regulations are sovereign in character, and essentially municipal and inland, and intended to be limited in operation to the territorial authority of the government over property within that authority, or in transit between places therein, with the exception of vessels and property made liable to seizure when found *at sea*, (section sixth.)

The enactment in the sixth section, however read, cannot be understood simply as a municipal regulation, but is one also connected with a state of war with rebels, and in that sense is capable of being carried into effect also by the prize court, because extending to seizures at sea. The decision in *Rose v. Himely* (4 Cranch, 241) left that proposition unsettled by the court, (*Id.*, 281,) a majority of the court reserving their opinion on the point whether a seizure of property on

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the high seas, under a municipal forfeiture, is invalid, provided the property seized be immediately proceeded against regularly by the country to which the capturing vessel belongs. (See also the opinion of Johnson, J., dissenting in the main case, and his judgment in the circuit court in the same case, 4 Cranch, Appendix, 509; and the opinion of Ch. J. Tilghman, delivering the judgment of the court in *Cheviot v. Foussat*, 3 Binney, 220 to 254.) The prize courts of Great Britain condemn property of its own subjects, being belligerents, whenever taken in a trade prohibited by the law of England; (*Wheat. on Captures*, 225;) and the English government sanctioned as lawful a capture at sea by a Russian ship-of-war of an English merchant vessel which was attempting to violate a municipal law of Russia. (*The Vixen*, 54 Parliamentary Blue Book, A. D. 1857.)

In the opinion of the court in *Rose v. Himely*, (4 Cranch, 272,) delivered by Chief Justice Marshall, the doctrine is declared that a sovereign endeavoring to reduce revolted subjects to obedience possesses both sovereign and belligerent rights, and is capable of acting in either capacity, and that if, as legislator, he ordains a law imposing punishments for certain offences, which law is to be applied by courts, the nature of the law and the proceedings under it will determine whether it is an exercise of belligerent rights or exclusively of his sovereign power, as also whether the court, in applying this law to particular cases, acts as a prize court, or as a court enforcing municipal regulations. In the case of *Hudson v. Guestier* (4 Cranch, 293) the seizure, under like edicts, having been made by the parent government within the territorial jurisdiction of St. Domingo, but the property having been taken into a Spanish port, and tried and condemned in a French port, the court held that the French prize court had lawful jurisdiction, and that the condemnation could not be questioned in the United States courts.

In my judgment, the act of July 13, 1861, is an exercise of the sovereign authority of the government over its own citizens in insurrection and rebellion, and their property acquired and owned within the United States, and over those, also, remaining loyal to the Constitution, and is not intended as a declaration or establishment of the belligerent rights or powers of the government in that respect; nor is the statute to be construed as revoking or impairing any war rights possessed by the government in that behalf under the law of nations. Instead of these municipal regulations overriding or rescinding the powers of the government under public law, the contrary conse-



quence follows, in case of a conflict between a right to the forfeiture of property under municipal regulations and its confiscability under the *jus gentium*.

The brig Sally, an American vessel, was captured by a privateer, and condemned as lawful prize in the Massachusetts district, for trading with the enemy. The United States intervened and claimed the vessel as forfeited to them under the provisions of the non-intercourse acts. The cause was taken by appeal to the Supreme Court. The court in giving judgment say, that, by the general law of prize, property engaged in an illegal intercourse with the enemy is deemed enemy property; that it is of no consequence whether it belongs to an ally or to a citizen; that the illegal traffic stamps it with the hostile character and attaches to it all the penal consequences of enemy ownership; and that, in conformity with this rule, the property must be condemned to the captors. The claim interposed by the United States to the property, on the ground of an antecedent forfeiture to the United States because of a violation of the non-intercourse act of March 1, 1809, was disallowed. The court further say: "We are all of opinion that this claim of the United States ought not to prevail. The municipal forfeiture under the non-intercourse act was absorbed in the more general operation of the law of war." (The Brig Sally, 8 Cranch, 382.)

I am of opinion, therefore, that no sound objection to the jurisdiction of the court in prize, in respect to the Aigburth, arises on the ground of the act of July 13, 1861. The jurisdiction clearly exists, as against both vessels and their cargoes, on general principles; and the Aigburth may be also amenable to condemnation under the sixth section of this act, or under the act of August 6, 1861, as property owned by inhabitants of the Confederate States, commercially domiciled there, or as property acquired and used, after the passage of the last act, for the purpose of aiding or promoting the insurrection in the Confederate States. The statutory provisions may be acted on by the court directly, or the functions of the court as previously existing may be exercised to the same end; there being no incompatibility in enforcing the forfeiture through the powers of the court under its process in prize, or in proceedings for condemnation on the instance side of the court, on motion of the district attorney, in the same suit. (Act of August 6, 1861, 12 U. S. Stat. at Large, 319.)

In my judgment, therefore, the defences set up in the pleadings and on the proofs by the claimants in these suits are inadequate to their

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acquittal, and decrees of condemnation must pass in both cases against the vessels and their cargoes.

Other questions are also involved in both suits, which the court has been invoked to decide, in order that the United States, in case of appeal from these decrees, may have the opportunity of presenting to the courts above the entire grounds upon which the forfeitures are claimed in both actions.

It is insisted that both vessels were possessed of illegal documents, obtained from the enemy, giving them the privilege of making their voyages from the enemy's ports. These consist of custom-house clearances in those ports, and permits to pass the fortifications or limits of the same, both granted by rebel authorities. These were not papers professing to clothe the vessels with any protection from arrest at sea. They were only permits to navigate within and from the waters of the enemy, and were not designed or taken as covers against the rights of the United States as a belligerent. The acceptance and use of an enemy's license, whether efficacious or not, is ordinarily regarded as illegal, and as subjecting the vessel using it to confiscation. (*The Aurora*, 8 Cranch, 203; *The Fanny's Cargo*, 9 Cranch, 181; *The Ariadne*, 2 Wheat., 143.) The passes so taken by these vessels import (as would the rebel flag) that they were rebel property—which might require explanatory proof (*Wheat. on Captures*, 158) if their confiscability was placed on that charge; but the testimony as to their being such is fully made out on other proofs. Those documents were no way calculated to mislead or deceive the captors, and need not be regarded as illegal in the sense of clothing the vessels with false semblances, and composing of themselves justifiable cause of capture. They would only serve as protections against rebel cruisers, and would be valueless as means of safety if exhibited to any other power, the Confederate States not being acknowledged as a legal government.

Another charge affecting both vessels is, that they intentionally evaded the blockade imposed, at the time they sailed, on the ports of North Carolina. The proclamation of the President of April 27, 1861, declared that the ports of the States of Virginia and North Carolina would be put under blockade, in addition to the blockades ordered to be established, on the 19th of the same month, of the ports of South Carolina, Georgia, Florida, Alabama, Louisiana, Mississippi, and Texas. Commodore Pendergrast, by his proclamation of April 30, 1861, at Hampton roads, gave notice that he possessed adequate forces to make such blockade efficient.

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The Sarah Starr left the port of Wilmington, North Carolina, for Liverpool, England, on the 3d of August, 1861, and was captured by the United States ship-of-war Wabash, twenty-five or thirty miles out from the bar. She had been delayed leaving the port by a heavy gale of wind blowing off it for some days. It appears, from the proofs *in preparatorio*, that the master and some of the crew and one of the owners of the cargo on board knew, when the vessel sailed, that North Carolina was at war with the United States, and had heard a report current that the ports of North Carolina were under blockade at the time, but did not know the latter fact, or that United States vessels were stationed there to enforce a blockade.

It appears, from the proofs *in preparatorio*, that the schooner Aigburth was captured on the 31st of August, 1861, by the United States ship-of-war Jamestown, about forty miles off Fernandina, east of the Florida coast, on a voyage from Matanzas, Cuba, to New Brunswick, Nova Scotia, which was in continuation of her voyage out from Newbern. The outward cargo of rice from Newbern, and the return cargo of molasses, laden on board at Matanzas, were the property of Gravely, the owner of the vessel. The vessel, when captured, was fifteen to eighteen miles further west, and nearer the Florida coast, than her true course. The master was engaged to sail the vessel from Newbern to Matanzas, and thence, with a cargo, to the United States or British provinces, on wages of ninety-five dollars a month and five per cent. upon the net proceeds. He knew that North Carolina was at war with the United States, but did not know that Newbern was blockaded. But he was told by the British consul at Charleston, on the 22d or 24th of July, that he had that day received notice from one of the Commodores of the United States that the port of Newbern was blockaded from the 13th of that month, and that he, the master, must get to sea by the 28th of that month; and he did get to sea the morning of the 28th.

These proofs manifest that on board of both vessels there was clear notice that the ports of Wilmington and Newbern, at the respective times those vessels departed therefrom, were claimed by the United States to be held under blockade. The documents in evidence show that the blockade had been authoritatively imposed on the 30th of April upon those ports. The capture of the Sarah Starr, on the day of her departure, (August 3,) by a United States ship-of-war, is *prima facie* proof that she was empowered to enforce the blockade. It is, however, imperfect evidence of the fact that she was a force ad-

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equate to maintain the blockade, or was stationed there for that purpose; because the accompanying testimony shows that the capturing vessel was at the time moving past the port, *en route* for Hampton roads, from Charleston, where she had been previously stationed. There is no direct evidence that any vessel was at the time stationed off North Carolina in maintenance of the blockade of those ports. The proofs are, that the Aigburth went out of the port of Newbern on the morning of the 28th of July, without any vessel being seen or known to be off that port supporting its blockade.

There can be no doubt that it is incumbent on the United States to establish the fact that an adequate force was assigned and stationed off these ports at the time of the egress from them of the above-named vessels, so as to render the ingress or departure of vessels to or from the ports dangerous. There need not be a closed cordon of vessels surrounding the places at all times, so as absolutely to command all approaches to the ports from without, or departure from them from within. The blockade must, however, be so sustained by competent forces as to render it efficient to all ordinary intent and apprehension. This, of course, admits of the accidental absence of blockading vessels from stress of weather or other contingencies, and will also dispense with the employment of the more active and rapid services of steam vessels in such accumulation of watchful forces as is sometimes exacted when ships moved by canvas only are used. What the law demands is the allotment and stationing of that amount of force for the service which shall render it physically hazardous for other craft to evade the blockade. To that end, the blockading forces must be such as to constitute an actual investment of the place blockaded. The English and American cases concur in all essentials as to the lawful constituents of a blockade in modern times, and the manner in which it shall be enforced. (1 Kent's Comm., 144 to 161; 3 Phillimore on International Law, 387, art. 294; The Nornen, 1 Spinks' Prize Cases, 171; The Franciska, Id., 111.) A cluster of suits were embraced within one decision in the last case. The doctrines of blockade were largely discussed by the court. It is stated, in a note, that the general decision was reversed on appeal; but it does not appear on what points. The case is, however, instructive as to the general application of the law of blockade.

The testimony upon the preparatory interrogatories is very full and positive that no vessels-of-war were placed off those ports, within view or knowledge of these vessels, when either of them came out;

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The Sarah Starr and The Aigburth.

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and it is made equivocal whether the blockade was actually set on foot fifteen days before the egress of either of them from the ports. It is made sufficiently certain, upon the proofs, that notice of the blockade had reached both vessels previous to their sailing from the ports. In this state of the case it is incumbent on the libellants to give evidence of the time the blockade was actually imposed, and that it was made efficient by forces stationed there adequate to prevent vessels from going in or leaving without the knowledge and interposition of the blockading force to prevent it. Although the evidence raises a suspicion that the Aigburth might be seeking an opportunity to enter a blockaded port, yet it is not sufficiently direct and impressive to justify her condemnation on that proof alone.

The usage in the United States courts of prize is to allow further proof to be given by either party upon reasonable cause appearing in the progress of the suit for its reception, or on such cause being afterwards shown; and, in the English practice, the libellants are allowed, of course, to put it in all cases where the claimants elect to proceed, on their part, by plea and proof. (*The Maria*, 2 Spinks' Prize Cases, 321.) Here the claimants make full defence on the record by their claims and answers, and would, in that manner, fall within the rule.

A certificate from the Navy Department, furnished in another suit, of the allotment of vessels to the maintenance of the blockade of the North Carolina ports, was offered in evidence by the libellants, to be applied in this trial; but, not being assented to by the advocate for the claimants, it cannot be considered as legally in evidence in these suits.

Upon the points of the efficiency of the blockade, and the time it was set on foot by the government, and of the supposed attempt of the Aigburth, at the time of her capture, to violate the blockade, the libellants are allowed to furnish further proofs on giving ten days' previous notice to the proctor for the claimants.

Upon the other points in issue and litigation between the parties, it is ordered, *first*, that a judgment and decree be entered, declaring that the brig Sarah Starr and her cargo were both, at the time of their capture, enemy property, and subject to condemnation and forfeiture to the libellants as such; *second*, that the schooner Aigburth and her cargo, at the time of their capture, were both enemy property, and subject to condemnation and forfeiture to the United States as such, and that they be so declared and adjudged; and, *third*, that the masters and owners of both vessels, and of their cargoes, had notice and

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The Prince Leopold.

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knowledge, at the time of their egress from the ports of North Carolina, that those ports were in a state of blockade by the ships-of-war of the United States; but it does not appear by the proofs that such blockade was efficiently supported and enforced on the part of the government; nor does it appear that actual notice thereof was given to those vessels, or that it was imposed fifteen days prior to the departure of the said vessels from those ports; nor does it appear that the said schooner Aigburth was, when captured, attempting to violate any blockade of ports on the coast, set on foot by the proclamations of the President of the United States; and, accordingly, as to these three points, the libellants are allowed, as above directed, to give further proofs.

If no further proofs are offered, pursuant to the terms above mentioned, then a final decree is to be entered in favor of the libellants for the condemnation and forfeiture of both of the aforesaid vessels and their cargoes as enemy property, and in favor of the claimants, acquitting the said vessels of the charge of having violated the blockade aforesaid in leaving the said ports, and the schooner Aigburth of attempting a violation of such blockade at the time of her capture.\*

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THE SCHOONER PRINCE LEOPOLD AND CARGO.

Where an offence against the prize law has been committed, the vessel or cargo may be arrested anywhere at sea, or within the dominions of the capturing power, and by any person, officer, or citizen, as property belonging to the government.

The practice in prize proceeding in the courts of the United States is governed by the rules of admiralty law disclosed in the English reports, when not regulated by decisions or rules of the American courts.

Vessel and cargo condemned, as enemy property.

The captors allowed to produce further proof on the question of breach of blockade.

(Before BETTS, J., December, 1861.)

BETTS, J.: This vessel was arrested September 11, 1861, in the harbor of New York, by the marshal, and was libelled as a prize, and also as forfeited under the act of July 13, 1861.

The first question raised on the defence, by the pleadings and on argument, went to the regularity of the proceedings: first, in respect to the arrest of the prize, that there is not a sufficient specification of the cause of arrest, and also that the jurisdiction of the court is, in that respect, rescinded by the act of Congress. These considerations are

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\* In the case of the *Sarah Starr* the circuit court, on appeal, July 17, 1863, affirmed this decree as to the vessel and the cargo claimed by Evans, and reversed it as to the cargo claimed by the Munroes. A further appeal to the Supreme Court has been taken by the claimant of the vessel, but none as to the cargo. In the case of the *Aigburth* this decree was affirmed by the circuit court, on appeal, July 17, 1863.

sufficiently discussed in the previous cases of the *Sarah Starr* and the *Aigburth*, and the authorities dispense with all formalities of charge in the libel. (3 Phillimore, art. 470 ; American Encyclopedia, art. "Prize," by Story, J.) Second, that the seizure was by civil officers in the port of New York. When an offence against the prize law has been committed, the vessel or cargo may be arrested anywhere at sea, or within the dominions of the capturing power, and by any person, officer, or citizen, as property belonging to the government. By the English practice, custom-house officers capture vessels in port as prize, (*The Elize*, 1 Spinks' Prize Cases, 88;) and the seizure may be made even in the London docks, (*The Conqueror*, 2 Ch. Rob., 303.)

The practice in prize proceedings in the courts of the United States is governed by the rules of admiralty law disclosed in the English reports, (*Brown v. The United States*, 8 Cranch, 135, per Story, J.; *Jecker v. Montgomery*, 18 How., 110; see arguments and decisions in prize proceedings, *Jecker v. Montgomery*, 13 How., 498,) when not regulated by decisions or rules of the American courts. The exceptions to the place and manner of the capture, and to the mode of pleading it, are not tenable.

On the merits: First, the claimants had sufficient notice that the port of Newbern was under blockade, with other ports along the eastern coast of the United States south of Maryland. That the notice reached them before the blockade was made perfect on the part of the United States, or was efficient by the presence of an adequate force, is a fact not established by the evidence before the court, but may yet be made out by further proofs on the part of the captors. The vessel went to sea from Newbern, North Carolina, on the 1st of August. She was built in North Carolina, and was owned by Ellis, a merchant of Newbern, who shipped the crew on board on the 25th of July. He transferred her on the 16th or 18th of July to McLeod, who was a neutral British merchant, domiciled in business for several years previous in Charleston, and the British registry was made out in the name of McLeod. One of the crew testifies that the master, Wallace, told him in Newbern that he was part owner of her. She was loaded at Newbern with turpentine. The cargo is claimed by Wade, who came with it as passenger on the vessel. By the manifest, the cargo was shipped by McLeod, (who admits that he belongs to the Confederate States,) and was consigned to Wade. The cargo was put on board on the 23d of July. Wallace, the master, testifies that Wade told him the cargo belonged to McLeod. Wade, examined as a witness, is a native of North Carolina, and a resident there. He claims to be, in

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**The Mary McRae.**

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his private sentiments, a loyal citizen of the United States, opposed to the rebellion, and that he designed to export the cargo claimed by him, and to withdraw from the State and travel in Europe. His private opinions cannot be inquired into by the court. He, as a native resident of the State, is unequivocally by law subject to all the responsibilities attached to his birth and residence, in respect to property he acquires in the enemy country and attempts to export from it.

The points adjudged in the cases of the *Sarah Starr* and the *Aigburth* apply to this, and must govern in these particulars the decision of this case.

Judgment for the libellants, condemning the vessel and cargo as enemy property. The libellants are permitted to give further proofs on the question of breach of blockade, if offered within ten days after notice of this decree. The report of the Navy Department to the Secretary of State, dated July 24, 1861, does not supply definite and adequate statements of the forces actually maintaining the blockade off the port of Newbern, or in that direct vicinity. It must be presumed to be within the competency of the Navy Department to prove affirmatively the acts of blockade performed by the squadrons, or particular vessels assigned to that service.\*

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**THE BRIG MARY MCRÆE.**

Part of vessel condemned, under the 8th section of the act of July 13, 1861, (12 U. S. Stat. at Large, 257,) as belonging to a citizen of a State in insurrection.

Part of vessel acquitted.

The claim of the owner of the acquitted part to a lien upon the condemned part for outlays in fitting the vessel was disallowed, and the claimant was referred to the power of the Secretary of the Treasury, under the 8th section of the act, to remit the forfeiture.

(Before BETTS, J., December, 1861.)

BETTS, J.: This is a libel of information by the United States, demanding the forfeiture of the above-named brig, under the 6th section of the act of Congress of July 13, 1861. (12 U. S. Stat. at Large, 257.) It is ordered by the court that three fourth parts of said brig be adjudged forfeited to the libellants with costs, and that one fourth part, claimed by James Crocker, be acquitted. The claims of Crocker for outlays in fitting the vessel are no lien in law upon the remaining three fourth parts, and whether any portion of that forfeiture will be remitted to him rests in the discretion of the Secretary of the Treasury, under the 8th section of the act above named.

Judgment accordingly.

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\* This decree was affirmed, on appeal, by the circuit court, July 17, 1863.



## THE SCHOONER D. F. KEELING.

Under the confiscation act of July 13, 1861, a vessel belonging to an alien female, who resided transiently at New Orleans, having gone there to visit some relatives and attend to some matters of account, with the intention of then returning abroad, and who was engaged in no mercantile business there, was held not to be subject to forfeiture.

(Before BETTS, J., December, 1861.)

BETTS, J.: This was a libel of information, filed November 8, 1861, by the United States district attorney, in behalf of the United States, alleging the seizure of the above-named vessel, on the 30th of October last, in the port of New York, by the collector of the port, and charging that she was the property of Mary Hutchinson, an inhabitant of the city of New Orleans, in the State of Louisiana. It alleges that the said vessel, her tackle, &c., has become forfeited to the United States by virtue of the act of Congress of July 13, 1861.

The claimant, in her answer, asserts that she is sole owner of the above vessel, which is a British vessel, and that the claimant has been sole owner of her since May 25, 1861, and is a British subject, and that the vessel is protected by subsisting treaties between Great Britain and the United States from seizure under any allegations in the libel.

She denies that she is an inhabitant of New Orleans in rebellion against the United States, and that she is such an inhabitant thereof as could cause the vessel to become forfeited under or by virtue of the act of Congress referred to in the libel. She avers that she is a native of Ireland, a widow, feeble and aged, about sixty years old, and in no way engaged in merchandise, or any other business. She denies that the vessel, &c., has incurred any forfeiture to the United States.

Evidence was given upon both sides on the point whether the vessel, when seized, belonged, within contemplation of law, to a citizen or inhabitant of New Orleans, in the State of Louisiana.

The assistant district attorney, on the argument, contended that the claimant, on the true construction of the words of the act, was an inhabitant of the State of Louisiana during her ownership of the vessel, but stated that "if her abode there was merely temporary and transient, the confiscation of the vessel was not claimed."

The evidence is that she is a native subject of Great Britain; that after the death of her husband she came from London to New Orleans to visit two of her sisters and some grandchildren, all residing in New Orleans, and that she intended to return to London. The precise time she has been in New Orleans is not specified in the proofs, but one of the witnesses, a brother of her son-in-law, says that he knew her there a few months. It is proved that she took the transfer of

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The D. F. Keeling.

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this vessel from a Mr. Leitch, then residing in New Orleans, and having, also, connexion with a house of trade in Minatitlan, in Mexico, in part payment of a debt *bona fide* owing her from him; and that he, because of disaffection with the rebellion in Louisiana, and being loyal in his sentiments to the Union, left New Orleans in the vessel. The vessel was laden and despatched from New Orleans to Vera Cruz and Minatitlan in her name and for her use, and from the latter place to New York, with a cargo, in the same way, and, when seized, was destined to return to Minatitlan in the same interest.

The penal language of the act under which the seizure was made is in these words: "Any ship or vessel belonging, in whole or in part, to any citizen or inhabitant of said State or part of a State whose inhabitants are so declared in a state of insurrection, found at sea, or in any port of the rest of the United States, shall be forfeited to the United States."

The title to the vessel did not pass to the claimant as being herself in any business pursuits, or having a mercantile domicile in Louisiana. She acquired it as a neutral creditor, having an honest debt, exceeding its value, owing to her by the vendor, and who immediately abandoned the State to avoid aiding the rebellion therein. There does not, therefore, appear to have been any semblance in the purchase of the vessel of purpose to promote the trade and interests of the enemy in the transaction, or to enable the vessel or claimant to become mixed with enemy trade or operations.

But, without feeling that the case, in its special features, demands any close examination of the scope of the enactment, I take the alternative concession of the United States attorney as the true exposition of the law which the government desires to be made in this suit, and say that the evidence, in all its bearings, is satisfactory; that the claimant is a foreign subject, engaged in no mercantile business in New Orleans; and that her residence or inhabitancy there was transient, and limited to the intention of visiting near relatives residing in that place, and settling some matters of account, and then returning to her home in London.

I accordingly consider that she was not, at the time, such citizen or inhabitant of New Orleans as will subject this vessel to be forfeited to the United States. No costs can be awarded by the court against the United States, and, without discussing the merits of a claim to costs, I order a decree acquitting the vessel, her tackle, &c., from arrest, and their redelivery to the claimant.

## THE SCHOONER SOLIDAD COS AND CARGO.

Cargo condemned, as enemy property, and also for an attempt to violate the blockade.

(Before BETTS, J., December, 1861.)

BETTS, J.: This vessel was captured September 11, 1861, off Galveston bar, by the United States vessel-of-war South Carolina, ostensibly bound on a voyage from Vera Cruz to Matamoras or Key West. The owners of the cargo resided in Texas or Louisiana, and went out and returned on board the vessel. They sailed with her from Galveston in August previous, owning the outward cargo of cotton she carried. The vessel was in charge of her owner, who acted as mate. He had resided six years in Texas with his family. A sham sale was made by him of the vessel in Tampico, in order, as it appeared, upon the proofs *in preparatorio*, to put her in the name of a Mexican owner, for the proposed voyage or adventure. No consideration was paid by the purchaser, and he took an engagement from the vendor, that, on the return of the vessel to him at Tampico, his notes for the purchase money should be restored to him, and the vessel be returned to her American owner.

All on board the vessel knew that the Gulf ports were blockaded when they left Galveston, and the vessel ran the blockade, in going out, by avoiding the main channel and making her exit through a different and obscure one.

The mate testified, on his examination, that the vessel, at the time of her capture, had received no notice of the war, or of the blockade at that port, and that he had pursued his voyage for Matamoras or Key West, and had not attempted to enter any blockaded port. Another of the ship's company proved that the vessel had passed Matamoras when she was taken, and had not attempted to enter that port, and did not steer for it or Key West, but made a course to enter some of the American Gulf ports.

The vessel, when captured, was found unseaworthy, or so feeble that she could not be safely sent to a northern port, and her cargo was taken out and transmitted on the United States brig Delta to this port, where it has been libelled.

Upon the facts in proof, this cargo was manifestly enemy property when arrested, and is liable to condemnation as such. It was also intended, by the master of the vessel, to take it into some one of the blockaded ports, and this endeavor must be presumed to have been

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The Albion.

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known and acquiesced in by the owners of it on board, if not directed by them.

Upon either ground, accordingly, that the cargo is enemy property, or that it was intended to carry it into a blockaded port, in violation and fraud of the blockade, the cargo is subject to forfeiture. (*Jecker v. Montgomery*, 18 How., 110.) The pretence of the actual owner of the vessel that he was ignorant of the blockade at Galveston, because he had not been warned off or had personal notice of the same, or of the existence of the war, is shown, by the other proofs, to be deceptive and untrue.

Judgment of condemnation of the property seized.

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THE SCHOONER ALBION.

Vessel and cargo condemned as enemy property, and for a violation of the blockade.

(Before BETTS, J., January, 1862.)

BETTS, J. : The return into court of the proof taken by the prize commissioners having been opened by order of the court, and judgment of condemnation of the vessel and cargo being moved thereon by the United States attorney, and no person appearing to oppose the same, an interlocutory order of condemnation, pursuant to the motion, was granted. On the submission of the proof so brought in for the consideration of the court, the same were examined and showed the case to be this : The vessel was captured with her cargo, by the United States ship-of-war *Penguin*, on the 25th of November, 1861. She was first discovered making for a port six or seven miles off North Edisto, in South Carolina, and twelve or fifteen miles southeast of Charleston ; but on being pursued by the *Penguin*, veered her course northerly, in the direction of New York.

She exhibited to the captors a certificate of British registry to Pembroke Saunders, of Nassau, N. P., merchant, executed November 13, 1861, and a certificate of the due clearance of her cargo by the receiver general at that port, November 16, and an affidavit taken before the British consul there resident, of Henry R. Saunders, to the verity of the invoice of the cargo. With these documents were bills of parcels of the cargo shipped, and the shipping articles purporting to have been executed by the master and crew of the schooner, on the 15th of November, for a voyage from Nassau to New York, and back to the port of Nassau.

On the 23d of November the schooner was boarded by Lieutenant Wiltse, of the United States navy, from the ship-of-war St. Lawrence, off the coast of Georgia, who indorsed on her register a warning not to enter any port south of Hampton roads, on account of the blockade.

Two of the seamen, examined *in preparatorio*, testified that they had no knowledge of any attempt or design on the part of the schooner to enter a blockaded port, nor any actual knowledge that Charleston or the contiguous ports were blockaded, and supposed she was truly performing a voyage from Nassau to New York. One of them, however, admits that the vessel had run so near the South Carolina coast, and headed so directly towards it, as to render her movements suspicious.

The other witness, however, on his examination before the prize commissioners, made an unreserved and apparently ingenuous and credible exposure of the enterprise.

He was the mate of the vessel and part owner of her and the cargo. He states that he and her master, and the other owners of the vessel and cargo, have for very many years been residents, with their families, in Savannah, Georgia. The vessel was furnished by them solely with their own funds, as was the cargo. The voyage commenced from Savannah to Nassau. The vessel was there laden with cargo owned by them, and sailed for their benefit. They had long known of the blockade of Savannah and Charleston, and of the southern coast generally. Her voyage was to be from Savannah to Nassau, and back from Nassau to Savannah, or some such blockaded port as they could get her into; and, after she departed from Nassau she was never directed towards New York, nor intended to make that course, further than that, on discovering that she was chased by the United States war-ship which captured her, she assumed a course towards New York, hoping to escape the pursuit.

It is needless to detail the testimony further. There are no facts produced in contradiction of this evidence, and it is conclusive of the criminality and confiscability of the vessel and cargo, both as showing it to be wholly enemy property, and as demonstrating that if it could successfully wear a neutral cloak, it was procured, shipped, and transported for the purpose of evading the blockade it was attempting to run when captured.

Judgment and condemnation as lawful prize of vessel and cargo.

## THE SCHOONER HANNAH M. JOHNSON AND CARGO.

(Hearing on further proofs.)

Enemy property, shipped by an enemy, from an enemy port to his creditor to be applied on a debt, but which, before it came to the creditor's hands, was captured at sea, continues to be enemy property.

The transfer to the creditor cannot be carried into effect after the intervention of the legal rights of the captors.

(Before BETTS, J., January, 1862.)

BETTS, J.: The decision in the above cause, on the hearing upon the pleadings and the proofs *in preparatorio*, concludes, after condemnation of the cargo, with costs, as being enemy property, with the provision following: "Leave, however, being given to the respective claimants thereof to produce further proofs that the cargo, when shipped, belonged to neutral or loyal owners, such further proofs are to be furnished at the cost of the claimants, and are to be given within ten days from the entry of this decree, unless further time be allowed therefor by the court or by stipulation of the libellants."

On the 8th of January instant the counsel submitted further proofs taken upon their mutual attendance before a commissioner of the United States courts, with their respective arguments to the court thereon. This attempt to protect the cargo was, however, limited to the claim of ninety-nine hides in behalf of Leopold Lithauer, to which some further proofs were produced and addressed, and nominally also, to the claim interposed in behalf of C. C. & H. Faber, of New York, to sixty bales of cotton. That claim was not upheld before the court after the further proofs were introduced, but I understand, from extraneous suggestion, that it was the understanding of counsel, that the court should consider and pass upon the further proofs in this respect also, as part of the matter submitted for the judgment of the court.

The hides were shipped by Wiener, in his own name, and continued to be his property to the time of capture. They never came to the hands of Lithauer by actual or symbolical delivery from the New Orleans owner. They were designed, no doubt, in the process of negotiation and arrangement between Wiener and Lithauer, to be remitted by the former, and were expected to be accepted by the latter, in credit upon an open account in their mutual dealings, but had never, in the transition, so changed hands as to become the property of Lithauer, or to operate as an acquittance to their value of the liabilities of Wiener to him. They remained, in point of law, the property of the New Orleans merchant, and must have continued so, without his consent had been procured to indorse the bill of lading to Lithauer, or

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The Hannah M. Johnson.

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otherwise transfer the merchandise to him. It was, no doubt, a mental understanding and purpose with Wiener that the goods should go to Lithauer, but that design, if existing, failed of being carried into effect, and, by the rules of prize law, could not be done after the intervention of the legal rights of the captors. (Wheat. on Captures, 85, sec. 16; The Abo, 1 Spinks' Prize Cases, on appeal, 46.) Accordingly, the hides left New Orleans in the ownership of a trader resident there for many years, and after the war between that State and the United States was set on foot, and when seized were enemy property. The master of the vessel has alone intervened and claimed the hides in the character of owner and carrier; but he shows no proof of any right of property in the hides in himself. It accordingly follows that the exportation of them from New Orleans was by the shipper for his own interest.

The claimants, Faber & Co., in the testimony given on the further proofs prove that, in June last, they received the sixty bales of cotton shipped in the Hannah M. Johnson, as consignees and cotton-brokers. No bill of lading accompanied the shipment. The master's manifest, attested at New Orleans the 14th of May last, and his freight list of the same date, represent the cotton as shipped at New Orleans by F. M. Fish. It was remitted, through the agency of Jacob Barker, for Mr. Fish, who was at the time a resident also of New Orleans. The order to deliver the goods to Barker was made on the drayman's receipts of the cotton on board the vessel before she sailed from New Orleans, May 14, and Fish's letter addressed to Barker in New Orleans, May 22, shows that Fish still continued to act as owner of the goods, and directed their consignment in New York to Faber & Co. Mr. Barker subsequently, on the 23d of July, by letter of that date to New York to Faber & Co., recognizes Fish's ownership of the cotton, and directs them to deliver it, or the avails of it, to Hendrickson, of Rhode Island. Mr. Barker never made any advances to Fish upon the assignment of the cotton to him, and Fish continued to act as the sole owner of it until the time it, or its avails, went to Hendrickson, which was not until July last. Mr. Fish still continues a resident of New Orleans.

The further proofs introduced by these parties have no way varied the case as it stood upon the original evidence, and the decision before pronounced must now be made final in respect to those portions of the cargo also.

Judgment accordingly

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The Henry C. Brooks.

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## THE BRIG HENRY C. BROOKS AND CARGO.

Vessel having been used by the enemy without the knowledge of her owners, and recaptured from the enemy, restored, by consent, with costs to the libellants.

Cargo condemned as enemy property, employed in aiding the insurrection on foot at the place of its capture, and as shipped with intent to run the blockade.

The subject of the rate of costs in prize cases deferred, to await the action of Congress.

(Before BETTS, J., January, 1862.)

BETTS, J.: This cause being regularly ordered on the calendar and called, and not being answered to by any claimant, the district attorney moved for judgment, and submitted the pleadings and proofs to the court.

The vessel and cargo were arrested and taken as prize by the United States vessel-of-war Harriet Lane, on the 29th of August, 1861, within the outlet of the port of Washington, in North Carolina, and near Hatteras inlet. She was sent to this port, and an information was filed against her by the United States and captors on the 16th of September thereafter, under process upon which she and her cargo were brought before the court.

The libel charges that the vessel and cargo were owned, when arrested, by citizens or residents of that portion of the United States which is in insurrection against the laws and government of the United States, and that the vessel was then lying in a blockaded port, with the design to violate the blockade, and carry the cargo on a foreign voyage.

A general answer and claim, in behalf of the Columbian Marine Insurance Company of the city of New York, and of several individuals, owners of the vessel, were put in the 15th of October thereafter, alleging ownership in themselves of the brig. No test oath was filed by the claimants and no appearance was made in court to support the claim and answer on the hearing, but the parties libellants, with those who had intervened and answered, carried on subsequent proceedings essentially by mutual consents and stipulations in writing filed in court. Under these stipulations orders of various kinds were taken and entered in the suit, admitting and consenting that the vessel was "the property of loyal owners, citizens of the United States, and had been and was recaptured from the unlawful possession of the enemy, by whom she was illegally employed without the knowledge, privity, or consent of the owners thereof, and is, therefore, to be proceeded against in all respects as though the naval captors herein had filed a separate libel against the vessel for the military salvage of said vessel allowed



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*The Henry C. Brooks.*

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by law ;" and also admitting "that an order had been duly entered for the appraisement of the said vessel, in compliance with the consent of said parties, and that the report of such appraisement had been duly filed ; that it was thereupon ordered by the court, on such consent and stipulation of the parties, that the vessel be restored to the aforesaid claimants thereof, upon their payment to the libellants, or to their proctors therein, of one-eighth part of such appraised value of the vessel, her tackle, &c., together with the costs of the proctors for the libellants, and such portion of the costs of the clerk and marshal as are exclusively applicable to the vessel, as the same may be assessed or entered by consent."

By virtue of such arrangement and stipulations between the parties interested therein, all matters respecting the vessel and her equipments were disposed of by the parties concerned, without other than the passive action of the court thereon.

No claim was interposed to the cargo or any part thereof. It consisted of cotton and naval stores, and was apparently in transit from the port of Washington, in North Carolina, for some foreign port, when the vessel was seized, after being deserted by the crew, and after all papers and evidences of the destination of the property or its ownership had been withdrawn or destroyed. The evidence found the cargo to be enemy property, the products of the country from which the attempt was making to transport it, which had been intercepted in Pamlico sound, in or near Hatteras inlet, by capture by the land and naval forces of the United States of the forts and places there, together with the vessel and her cargo aforesaid, there so found deserted.

The vessel and cargo, according to the proof, were manifestly endeavoring to get out from an enemy port, then under blockade. Upon the evidence thus before the court, and in default of all appearance and defence to the suit, the libellants are entitled to a decree of condemnation and forfeiture on the libel against the cargo aforesaid.

No doubt an essential object aimed at, among the questions brought into view in the papers presented in this and other prize suits, is to obtain a rule or order from the court fixing the rate or amount of fees or compensation to be allowed the officers concerned in conducting prize or seizure cases, or the principle upon which the same are to be computed or ascertained.

The question has been repeatedly pressed upon the attention of the court since the commencement of this order of business during the present war. The difficulty manifested itself in the late war with

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Mexico, but to so small a degree as not to lead, at that time, to any definitive action on the subject by Congress or the courts; and the opening of the existing hostilities threw the question upon the courts without any certain or satisfactory guide to the determination they are asked to make. This has produced delay in the final disposition of the point, in order to obtain from the concurrent action of the United States courts, or an appropriate legislative declaration, a uniform regulation, which shall meet and govern the entire subject.

I am given to understand that a law is now under consideration before Congress, which will probably obviate all existing difficulties in this respect. The court will, accordingly, still longer defer acting separately by itself on the matter of fees and costs in prize suits, trusting that the subject will be authoritatively settled by legislation within a brief period.

Judgment of condemnation and forfeiture of the cargo captured in this case is, therefore, ordered, in the usual form, both because the same was used and employed in aiding and promoting the insurrection on foot in the place of its capture, and because it was shipped and on transportation with the intent and endeavor to run the blockade of that port. The question of the rate and amount of costs is deferred until the further application of the libellants and the order of the court in respect to costs and expenses.



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THE SCHOONER JANE CAMPBELL AND CARGO.

The settled rule of the prize courts is, to require the captors of a vessel to bring in for examination her master and principal officers, and some of her crew; and the examination must be confined to them, unless special permission of the court is obtained to examine other persons. Prize law inhibits, under the disallowance of the right of prize to the captors, and the positive infliction of punishment by penalties and costs, any irregularities against the property seized or the captured crew, especially where the latter are neutral.

The burden is on the captors to prove the existence of an overruling necessity justifying the spoliation of property found on the prize, or the separation of the officers or crew from the captured vessel, or the omission to send them into port with the prize for examination.

The captors held liable in damages for unjustifiable conduct towards the crew and property on the prize after her arrest.

There was probable cause for the seizure, but the vessel was neutral property on a lawful voyage and was making for a blockaded port for repairs.

Vessel and cargo restored without costs.

Reference to the prize commissioners to ascertain the damages.

Subsequently both parties were allowed to give further proof as to the intention to violate the blockade.

(Before BETTS, J., February 25, 1862.)

BETTS, J.: This vessel and cargo were seized at sea, off the port of Beaufort, North Carolina, on the 14th of December, 1861, by the

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United States steamship of-war State of Georgia, and sent into this port as prize, and libelled by the United States and her captors, January 3, 1862. Several other vessels-of-war were, at the time, present at the same station. On the 21st of January, George Campbell intervened and claimed the vessel and cargo, as sole owner of both. The claim of the owner and the protest of the owner and master set forth with great particularity the grounds upon which the rightfulness of the seizure is contested, and these particulars are reiterated in substance on the examination *in preparatorio* of those parties. No exception is taken by the libellants to that mode of defence. The main grounds upon which the arrest is maintained, on the part of the libellants, are that the vessel and cargo were really enemy property, though simulated as neutral; that both were procured fraudulently, and with intent to violate the blockade of the port of Beaufort, North Carolina; and that the voyage had been prosecuted for that purpose, up to the time of their seizure in the immediate vicinity of that port. The vessel and cargo belong wholly to the claimant, and were taken possession of when approaching a blockaded port, under circumstances which justified a suspicion that the object was to enter the port without lawful authority or justifiable cause. But a preliminary question is raised by the defence, impeaching the regularity of the proceedings of the captors, which, in itself, it is alleged, takes away all legal justification for the arrest. This irregularity is charged to have been the breaking open and spoliation of the cargo by the captors, after the seizure of the vessel; not bringing into port the master and officers; wrongfully separating the members of the ship's company from the vessel, after her capture, and treating them harshly and unjustly afterwards, and then sending the prize into the remote port of New York without them, under the charge of an incompetent crew; and carrying the English flag, under which she had been captured, lowered, and the American flag hoisted over it, on her passage and when brought into this port.

The settled rule of prize courts is to require the captors to bring in, for examination before the judge or commissioners, the master and principal officers and some of the crew of the captured vessel, and the examination must be confined to them, unless special permission of the court is obtained to examine other. (1 Wheat. R., Appendix, Story, J., note, page 496.) Prize law, as administered in the English, American, and French tribunals, also inhibits, under the disallowance of the right of prize to captors, and the positive infliction of punishment by penalties and costs adjudged against them, any irregularities

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against the property seized or the captured crews, especially where the latter are neutral. (2 Wheat. R., Appendix, pp. 5, 6, 7, and notes and authorities there collected.) The general principle declared and enforced is that captors are held responsible for any gross irregularity or wanton impropriety towards the property seized or the ship's company arrested with it, and a satisfactory reason will be exacted for any deviation by the captors from the regular course of proceedings in prize cases. These doctrines are recognized and vigorously applied in the French ordinances, (*Id.* note,) and by mutual acquiescence among maritime nations, they supply the restraints which accompany the exercise of belligerent rights under the improved administration of prize law.

Before considering the countervailing evidence, and assuming the proofs to be that the vessel and cargo are neutral property, seized only because of a design and attempt by the vessel to violate the blockade of the port of Beaufort, and that the blockade was at the time an efficient one, the question arises whether the conduct of the captors after the capture was of a character to destroy the legality of the arrest, and to subject the captors, personally, to punishment for the infringement of the laws of maritime warfare. If this was so, it will be immaterial to inquire into the reality of the neutral ownership set up, because such misconduct, if established, operates with equal force against the libellants, though the property seized belongs wholly to the enemy; for the right of seizure by the belligerent capture is dependent upon the lawful use of that power by the captors at sea, when made under the authority of the general prize law alone. The first object will, therefore, be, to fix the character of the misconduct ascribed to the libellants, and see whether it was accompanied by circumstances of excuse or mitigation. The evidence as to these charges comes wholly from the claimants. No testimony is furnished on the part of the libellants, nor do they ask permission to put in further proofs in denial or extenuation of the misconduct charged against them in the claim and the proofs thereon. The claim, filed under oath by the claimant, and supported by the preparatory proofs, alleges, that when the schooner was arrested by the United States ship-of-war *State of Georgia*, her papers were examined by the boarding officer, and pronounced to be all right; that the schooner was then towed to the anchorage of the United States squadron, to be furnished the repairs she needed; that her cargo was also examined, and the crew of the seizing vessel permitted to help themselves to anything they could get; that the captain

of the Albatross, (another United States ship-of-war in company,) in the presence and with the assent of the prize-master, took from the prize schooner eight muskets, with cartridges and caps, the private property of the claimant, carried on board of the schooner for her protection, none of which have ever been restored to the claimant or the vessel; that the claimant, who was on board of the schooner for the voyage, her mate and three seamen, were wrongfully removed from the vessel, without their consent, and were sent by other conveyances to Baltimore, and were there left on shore, without provision or means to reach New York, other than at their own expense; and that the schooner was sent to that port in charge of a prize-master, who was not capable of navigating the vessel to New York, and had to rely on the seamanship of her master. The claimant also makes his own and the master's public protest, attested to on the 20th of January, 1862, and annexed to the claim as a part thereof. That sets up and avers, that the prize-master, in bringing the schooner into the port of New York, when off Barnegat, caused the American flag to be hoisted over the British colors upon her, and the same thing again done when off the Highlands of Neversink, and had these colors so kept up thereafter until she arrived in port at the navy yard at Brooklyn.

The burden is always laid upon captors to prove the existence of an overruling necessity justifying the spoliation of property found on the prize, or the separation of the officers or crew from the captured vessel, or the omission to send them into port with the prize, for examination. (*Arnold v. Del Col*, Bee's R., 5; S. C., 3 Dallas, 333.) The captors will be made personally responsible for goods so embezzled, (*The Concordia*, 2 Ch. Rob., 103,) unless they were properly out of the actual possession of the captors at the time of the spoliation. (*The Maria*, 4 Ch. Rob., 352.) So, also, if a proper place or proper means are not adopted for bringing the captured property in, for prompt trial. (*The Washington*, 6 Ch. Rob. 275.)

The claim or protests cannot be regarded as affirmative proof in the cause against the libellants, especially those who made the capture, but they sufficiently indicate the exceptions which will be urged on the hearing against the validity of the capture, and should have placed the libellants on their diligence to supply other proof enabling the court to understand correctly the facts of the case, if they have been wrongfully stated or disclosed in the preparatory proofs given.

The evidence, as it stands, in my judgment, fastens upon the libellants unjustifiable conduct towards the crew and property on the prize

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after her arrest, for which misbehavior the captors are responsible in damages to the parties affected thereby, it being in no way excused, or shown to have been reasonably required by any exigencies of the case. The occurrence may very probably become the subject of diplomatic notice between Great Britain and this country, particularly as to the reprehensible treatment of the English flag; but the claimants are entitled personally to compensation through the authority of the court, for injuries sustained by them from unlawful acts of the captors, perpetrated under the seizure, if duly proved on the trial.

Although the libellants did not proceed to make the capture of the schooner absolute until several days after she was in their possession, yet I think the circumstances surrounding her, disclosed in the proof, afforded reasonable grounds of suspicion that the voyage was set on foot and prosecuted with intent to violate the blockade of Beaufort, North Carolina. The officers of the vessel, and the owner of the vessel and cargo, who accompanied the voyage, well knew, before entering upon it, that a blockade had been imposed at that port. Moreover they had been long residents at that place, or engaged in business there. The schooner was American-built, and was purchased and laden at that port, by the claimants, after the war, with a cargo procured there, and immediately after arriving at Liverpool she fitted out, and undertook this voyage, upon which she was arrested. But these grounds of suspicion are virtually displaced by the evidence contained in the papers found on board of the vessel, and gathered orally in the preparatory testimony, showing that the vessel was neutral property, and was pursuing her voyage, on a proper route, to Cuba, until she was compelled, by accidents happening at sea, to seek an intermediate port or resource for immediate repairs to render her seaworthy and navigable.

The capturing squadron was satisfied of the actual necessity for such repairs, and attempted to supply them at their anchorage; but, on ascertaining the nature of her lading, her own origin, and the antecedent history of her owner, the captors were well justified in arresting her, and referring it to the judicial tribunals to determine whether her original destination was not fraudulently intended for the blockaded port.

Had the vessel been captured, at the place of her arrest, in the course of her navigation as documented, and without evidence of a reasonable necessity for her being placed in such vicinity to a blockaded

port, there would be cogent reasons for regarding the voyage as concocted and in execution for the purpose of violating the blockade. But the material disasters she had incurred at sea seem to me to remove the force of that suspicion, and to place the case before the court as it appeared to the captors on her giving herself into their charge, namely, that her position was reasonably accounted for by her crippled condition, and her inability to pursue and complete the voyage specified upon her papers.

The court, on the proofs before it, must regard the owner as a neutral and the ship and cargo as neutral property, regularly documented and destined to a neutral port, and adapted to the trade and commerce of that port. No application having been made on the part of the libellants to offer further testimony as to the integrity or culpability of the voyage, the general decree must be entered that the vessel and cargo be restored to the claimant, but without costs, there being probable cause shown on the proofs for her seizure.

The practical method of granting the remedy befitting the case has not been discussed or designated before me. Reparation is demanded by the counsel for the defence against the captors. My first impression is that no formula *de novo* need be adopted in order to obtain relief for the wrong, but that the matter may be disposed of as an incident to the suit. All parties entitled to contest the subject are before the court, under its cognizance in the original action. This impression will not be regarded as conclusive of the question in any subsequent case, but for the present purpose I consider it to be at the discretion of the court to order a reference to commissioners or assessors, if prayed for, to ascertain and determine the amount of damages sustained by the claimant and the crew from the alleged illegal acts of the captors after the capture, as an incident to the pending suit, or to admit the parties to proceed by pleadings and proofs anew, and have the charges settled by a more formal method of proceeding.

There seems to be no necessity for framing a formal issue, upon allegations and counter allegations, when the matter for relief is, in effect, pleaded in the claim, and thus the case is open alike to both parties. (The Maria, 1 Spinks, 321.) If no motion is addressed to the court by either party to require the interposition of pleadings to the point of damages, an order will be entered, if demanded, that the prize commissioners be appointed to ascertain and report to the court the damages sustained by the ship's company, or any of them, by means of

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the alleged misconduct of the captors towards them or their property after the capture.

March 6, 1862, on motion of the libellants, they were allowed to put in further proof, within twenty days, as to the actual intention of the claimant to violate the blockade, and the claimant was permitted to give, within the same period, further proof of his honesty of purpose.

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## THE SCHOONER LOUISA AGNES AND CARGO.

A claimant in a prize suit cannot put in a special claim or answer leading to issues other than the one simply of prize or no prize, without the assent of the United States attorney or the special order of the court.

In order to affect a neutral with the penal consequences of a violation of a blockade it is necessary for him to have been sufficiently informed of its existence.

An attempt by a neutral vessel to enter or evade a blockaded port, with knowledge or notice of the blockade, is a culpable violation of it, although no warning in writing is given to such vessel.

If a vessel approaches a blockaded port with knowledge of the blockade, and with the intention of violating it, her subsequent departure under the compulsory direction of a blockading cruiser does not reintegrate her to the state of an innocent trader, and she may still be arrested for the offence.

An attempt, on the part of a neutral owner, to mislead a blockading force by a deceptive representation on his vessel's papers, amounts to fraudulent misconduct, which justifies the confiscation of the vessel.

Every dissimulation in the papers will, in the judgment of a prize court, be regarded as intended to conceal what could not be safely disclosed, and as affording evidence that the destination of the vessel was falsified with a design to defraud.

The question discussed, as to the proper method of investigating, in prize cases, acts of misconduct committed by captors on the prize property and the officers and crew of the vessel subsequent to their arrest.

The general rule in respect to captures by public ships is, that the actual wrong-doer alone is responsible for any wrong done or illegality committed on the prize, excepting acts done by members of the seizing vessel in obedience to the orders of their superiors.

This court establishes this practice: that the right of reclamation for damages, in cases of captures made by public vessels, must be pursued by the parties averring the grievance and tort committed upon them, by plea and proof, which admit of counter allegations and full evidence under them.

An affidavit annexed to a claim is extra-judicial and is not testimony in the cause.

A fraudulent attempt to violate a blockade warrants a condemnation, although the claimant may be able to show that the captors have been guilty of irregularities and wrongs towards the prize or its ship's company subsequent to capture.

Vessel and cargo condemned for an attempt to violate the blockade.

Claimants ordered to sue out a monition to the captors, and file and serve the allegations and proofs on which they claim damages.

(Before BETTS, J., March, 1862.)

BETTS, J. : The vessel above named, and cargo on board, were captured on the 9th of September, 1861, by the United States ship-of-war Cambridge, off the coast of Virginia or North Carolina, and sent into this port as lawful prize, and here libelled, in the name of the



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United States and the naval captors, on the 13th of September, charged "with being engaged in an unlawful voyage, and employed in an illegal trade, and being lawful prize of war."

Josiah Slanghenright, as owner of the vessel, and James A. Moran, as owner of the cargo seized, interposed each a separate claim, by the same proctor, on the 21st of November thereafter, averring that they are British subjects, resident in Nova Scotia, and denying that the vessel and cargo are lawful prize; and each appends to his claim his test oath to the right of property alleged in his claim, and each also adds thereto a deposition of Robert Nickelson, master of the vessel, detailing various particulars respecting the voyage, and prays that the deposition or schedule may be received as part of such respective claims.

The papers found on board of the vessel at the time of her seizure prove her to be the property of Slanghenright, registered in his name at the port of Lunenburg, Nova Scotia, June 15, 1859, and freighted by Moran, the other claimant, with a cargo of merchandise, at Halifax, where her crew were shipped, and she was cleared, August 21, 1861, for the United States. The voyage named in the shipping articles was "to a port or ports in the United States, and back to the port of Halifax."

On the hearing of the suit, the charge on the part of the libellants was, that the voyage was illegally and fraudulently undertaken, with the intent to violate the blockade of the port of Wilmington, in North Carolina, or some other blockaded port in the rebel States.

The defence was, that the voyage was a lawful one, destined to a port in the United States, free to the commerce and trade of British subjects. The affidavit of the master of the vessel, attached as a schedule to the respective claims, "to be taken as a part of each claim," was also set up and insisted upon by each claimant as legal proof in his behalf. That deposition made allegations of misconduct committed upon the ship's company of the prize vessel by the captors after her seizure, namely: that the master and two of his crew were separated from the prize, and sent without her, to their serious inconvenience and wrong, to Baltimore, and from there, by railroad cars, to New York; that the writing desk of the master was improperly opened on board of the United States ship-of-war whilst he was thus detained; that papers were abstracted from it by the captors, and that two of the seamen on the prize were placed in irons, and sent with her so ironed to New York by the captors. These allegations are not ad-

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mitted by the libellants, or otherwise established by direct proof on the part of the claimants.

If the claimants may be allowed, at the discretion of the court, to vary the usual procedure in prize suits, by putting in special claims or answers, leading to issues other than the one simply of prize or no prize, this manifestly cannot be done without the assent of the United States attorney or the special order of the court. The papers filed in this instance by both claimants are without such warrant or authority, and must, therefore, be limited in their effect to mere denials of the cause of arrest.

The case, upon the preparatory proof, is *prima facie* adequate to demand the condemnation of the vessel and cargo seized. The facts made to appear in those proofs are concisely these:

The vessel and cargo were both owned by British subjects, residents in Nova Scotia. The papers on board of the vessel when she was arrested duly authenticated those facts, as also that the voyage was projected and entered upon, and the vessel and cargo cleared from the port of Halifax on the 21st of August, 1861, bound for the United States of America. The crew were shipped on the same day "for a port or ports in the United States, and back to the port of Halifax."

On the 6th of September she was boarded, from the United States ship *Susquehanna*, off Cape Lookout, (as stated in the deposition of the master of the schooner, interposed, as aforesaid, by the claimants, as part of their respective claims,) and warned not to enter any port between Cape Henry and the Gulf of Mexico; and on the 9th of September she was boarded for the third time, and then arrested by the United States ship *Cambridge*, thirty miles south of Cape Henry, on a course the reverse of that on which she was first boarded, and then sent, under charge of a prize master, to this port. The first entry in the log of the vessel was of her departure from Halifax, Friday, August 23, and the last, on Sunday, September 8, was the note of her log, "Lat. b. obs.  $36^{\circ}07'$ . On the preceding day, September 7, the last entry in the log was a note of latitude  $35^{\circ}42'$ , and an obscure remark: "At 8 a. m. we was boarded by a man warr ship 36 to the N. of Cape Hateras." The log is inartificially kept, apparently by an illiterate man, and supplies no means of fixing accurately the time or points of the progress of the vessel along the coast. The next entry, on Tuesday, September 10, 1861, was apparently by the prize master, which reads: "He went on board the schooner as prize master at 1 p. m., lat.  $36^{\circ}37'$  N., long.  $76^{\circ}45'$  W." The movements of the vessel

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and her reckonings are not stated with perspicuity in her log, but it is very manifest she had gone entirely clear of and below the capes of Virginia, and away from any direction towards Baltimore, and was tracing her way within a few miles along the coast of North Carolina, indicating a purpose to make a port in that vicinity. It is observable that the log indicates no other purpose of aiming for Baltimore than the heading to each page of its entries. The invoice of the cargo, and the bill of lading of the same, and the clearance, were dated at Halifax, the 21st August. The shipment was consigned to order, accompanied by a letter of instructions from the owner to the master, stating that his "main object will be to get into a port of North Carolina." If that is effected, he is directed to communicate with Mr. Flann, of Wilmington, with respect to a return cargo, which, it is desired, should be chiefly of spirits of turpentine. He is further instructed, if he does not succeed in getting into a southern port, to proceed to Baltimore, and there deliver his cargo to Messrs. Crown & Jones. The owner further remarks, in the letter, that "he loaded a schooner for Wilmington in June last, but, through the bad conduct of the captain, she arrived at Baltimore." The witnesses examined *in preparatorio* testify that the vessel was solely under the authority and charge of the shipper of the cargo.

This evidence would, by itself, denote, most unmistakably, that the voyage was planned and prosecuted, to the time of capture, with the single purpose of carrying the vessel and cargo into one of the southern and blockaded ports.

Two defences upon the merits are interposed by the claimants, and one in point of form against the validity of the capture. The formal one is, that the vessel was entitled to be warned off the blockaded port, and that, on such warning being given, she became discharged of all culpability by having immediately obeyed the notice, and changed her course, under the direction of the blockading vessel, for Baltimore and continued that course for a succession of days, until her ultimate arrest. This objection would be of avail under the general law, in case her approach to the blockaded ports was innocent, and in ignorance of their condition, without regard to the prerequisite of warning supposed to be connected with the imposition of blockades by the proclamation of the President. Because the doctrine that, in order to affect a neutral with the penal consequences of a violation of blockade, it is necessary for him to have been *sufficiently* informed of its existence, (The Rolla, 6 Ch. Rob., 367,) is not contested in this suit, nor has it been

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in any previous prosecutions here. The rule administered in this court has been, both before and since the act of Congress of August 6, 1861, (12 U. S. Stat. at Large, 326, sec. 3,) that an attempt by a neutral vessel to enter or evade a blockaded port, with knowledge or notice of the blockade, was a culpable violation of it, although no warning in writing was given to such vessel. The act itself, committed by a neutral, in fraud of a belligerent right, carries with it the consequence of condemnation, whatever plausible pretences may be alleged for the visit. (Upton on Maritime War and Prize, 192.)

If any question still remains as to that interpretation of the law of blockade, anterior to the one imposed upon the ports of North Carolina, April 27, 1861, it does not appear to me that such uncertainty continues since the enactment of the above statute ratifying and affirming all acts, proclamations, or orders of the President after March 4, 1861; that, accordingly, the offence will have been completed in this instance, if the schooner approached a blockaded port with knowledge of the blockade and intending to violate it; and that her subsequent departure, under the compulsory direction of a man-of-war, does not reintegrate the faulty vessel to the state of an innocent trader. Of the fact of knowledge and purpose chargeable upon the vessel and cargo the evidence is positive and explicit on the face of the letter of instructions from the owner for the voyage and the shipper of the cargo before referred to. The knowledge of the blockade possessed by the claimants was not alone imputable to them because of the vicinity of Halifax to North Carolina, and the general state of commercial intercourse between those sections; there was, also, beyond the letter of instructions to the master, before cited, the letter from the shipper, of the same place and date, to his consignee in Wilmington, North Carolina, which says: "I have loaded the bearer (master of the schooner) with a cargo, in the hope that she may find her way into your port or some place in the southern States;" and which, after directing the mode of investing the proceeds in tar, spirits of turpentine, &c., &c., contains this declaration: "I loaded a schooner for your port in June, but through the bad conduct of the captain she arrived at Baltimore. Captain Nicholas has my confidence," &c. This implies, most forcibly, a full knowledge that the adventure was set on foot to a port then being in a state of blockade, and that the undertaking was meant, by the aid of former experience, to defeat and escape the force and effect of the blockade. These considerations displace all excuse of a want of warning or of innocent acquiescence. The vessel must be regarded as

departing from the port sought, because of her forcible interception in attempting to enter it unlawfully, and not because the warning so received first apprised her of the illegality of the act.

The defence upon the merits that the voyage was not an illicit one, but was honestly undertaken and prosecuted to a loyal port of the United States, is wholly supplanted and falsified by the proofs referred to. Those items of proof demonstrate that the real and primary destination of the vessel was directly from Halifax to Wilmington, in North Carolina, an entry into which latter port was to be effectuated by the violation of its known blockade. The misrepresentation of the fact, entered upon the face of the log, must be understood as intended to deceive the captors. Each page of that document, from the inception of the voyage to the arrest of the vessel, is headed "a journal of a voyage from Halifax towards Baltimore;" and, on the evidence, that assertion was intended to create the false belief and confidence that the shipping articles and clearance on board, which named the destination of the vessel to be "a port or ports of the United States," or "bound for the United States," meant that she was destined and bound for the port of Baltimore. That conclusion would be a very natural one on the exhibition of the papers to a boarding officer, and thus a fraudulent deception would be imposed upon him.

An attempt on the part of a neutral to mislead a blockading force by a deceptive representation on his ship's papers amounts to fraudulent misconduct which justifies the confiscation of the vessel. Indeed, every dissemblance in the papers will, in the judgment of a prize court, be regarded as intended to conceal what could not be safely disclosed, and to afford evidence that the destination of the vessel is falsified with a design to defraud. (*The Mentor*, Edwards, 207.) In this instance, the bold and positive written instructions to the master to make his voyage to Wilmington, or other southern port, dispenses with all reasoning from presumption as to the purpose and object for which the voyage was undertaken.

It merits remark, also, that small confidence can be placed in the statements made by the mate and steward on the preparatory examination, that, when they shipped at Halifax, they supposed the vessel to be bound for Baltimore, and agreed for that voyage solely; because they both distinctly stipulated in the shipping articles for a voyage to "a port or ports in the United States," and nowhere named Baltimore as contemplated in the contract; and, also, because it is palpable from the log and from the knowledge they possessed from the course of the

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vessel from Cape Henry to the place of her being turned back, and from that point along the coast, that they must (the mate, and most probably the steward) have well known, when they gave their testimony, that the vessel was destined for a blockaded port. These men admit, on their examination, that they were aware, when the shipping agreement was entered into by them, that the ports of Virginia and North Carolina were under blockade, and that the fact was of general notoriety in Halifax.

The unsuccessful effort of the claimant, acknowledged in his letter of August 21 to his consignee in June previous, to evade the blockade of Wilmington, brings home to him direct notice of the fact of such blockade.

Upon all these facts and circumstances, it seems to me that the evidence is conclusive that the voyage was instituted and prosecuted by the claimant with a premeditated design to evade the blockade, then efficiently supported, at the port of Wilmington, North Carolina. The actual presence of adequate force stationed before the ports where the arrest was made, and the authoritative proclamation of the blockade, are sufficiently established, and, accordingly, the claimants show no exemption from capture because of insufficiency of notice to them, or want of legal warning of the blockade, nor that their return backwards towards Baltimore amounted to an acquittance of the culpable misconduct of the vessel and cargo in undertaking to run the blockade.

A further ground of exoneration from the arrest is also suggested and earnestly pressed, namely, that the capture is made illegal and void by acts of misconduct committed by the captors upon the prize property and the officers and crew of the vessel subsequent to their arrest. This objection has been urged as a conclusive defence to this suit, with the allegation that several cases, in addition to the present one, are still awaiting the consideration of the court, in which that cause of defence is more flagrant, and strenuous appeals are addressed to the court to redress the wrongs and losses inflicted upon neutrals by the course of conduct pursued during the present war by national vessels in the assumed enforcement of the law of blockade.

The court will indulge in no general denunciation or stigma of the supposed malfeasances of public vessels in the performance of their duties in relation to prizes, but will carefully examine the facts brought to its attention, and endeavor to uphold and enforce with strict justice the legal rights and responsibilities of all parties implicated in prize proceedings brought before the court. It is to be presumed that the

officers and crews of the navy are disposed to conduct themselves in obedience to their instructions and to the rules of maritime law, in executing their war powers, in making prizes; and the rules and practice of prize courts fix their responsibilities and the manner in which they are to be enforced, in case injuries are sustained from misconduct on their part, whether the capture is sanctioned and carried into effect by the court, or is declared nugatory and unjustifiable.

In a case of that character recently before the court, (*The Jane Campbell*,) it was deemed expedient to refer the subject to the inquiry of the prize commissioners, to ascertain whether the imputations of misconduct made against the officers and crew of a public vessel were well founded, and to report the amount of injury received therefrom by the owners of the captured property, or the persons connected with the vessel seized. In that case the capture was disaffirmed, and the vessel and cargo were restored to the claimant, but the right to relief for injuries sustained from the wrongful acts of the captors was not regarded as dependent upon the acquittal or condemnation of the prize. That relief was proffered to the party who made suggestions to the court of loss and injury sustained by him from the captors of the vessel and cargo, in the proceedings after the capture, and it was granted on motion, without other formality of procedure, as incident to the cognizance of the subject of prize then before the court, but without admitting that to be the only or best method of adjudicating the matter; and there was, in that case, direct evidence of the wrongful embezzlement of the prize property by the captors, whilst it was in their possession. A summary method of redress may be less appropriate to cases resting on charges of wrongful conduct, in prize proceedings by officers and crews of public vessels, than against private cruisers, because the latter, beyond their relation and subjection to the court as suitors therein, are usually under express stipulations by contract for good conduct, and to indemnify parties suffering from their misbehavior in making prizes, which places the private cruiser and its armament under the direct discretion of the court, and particularly so when, as in the present case, the grievances imputed to the captors consist almost exclusively of personal torts committed by them. The pleadings in a prize action involve, directly, no further question than that of prize. (*The Adelaide*, 9 Cranch, 284; *The Fortuna*, 1 Dods., 83.) The parties on the trial of that issue are not legally required, if they may be permitted, to litigate any point except that, and the probable sequents to it. In a qualified sense, the consideration whether the unlawful acts of captors,

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The Louisa Agnes.

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after the seizure of property as prize, do not render the arrest of it void, may be regarded as characterizing, vitally, the capture, and thus become intrinsically admissible evidence in defence against the conviction and forfeiture of the property. But yet, that ground of defence need not necessarily be directly connected with the capture itself, or with the liability of the property to capture as prize, but may, and most probably will, spring out of facts wholly disconnected with either of those particulars.

The general rule in respect to captures by public ships is, that the actual wrongdoer alone is responsible for any wrong done or illegality committed on the prize, excepting acts done by members of the seizing vessel in obedience to the orders of their superiors. (*The Mentor*, 1 Ch. Rob., 179; *The Diligentia*, 1 Dods., 404; 2 Wheat., Appendix, 13.) The liability of the officer is not constructive, and affixed to him solely on account of his superiority of command, but arises from his immediate orders or authority in the transaction. (*The Eleanor*, 2 Wheat., 345.) Embezzlements of the cargo seized, or acts personally violent or injurious perpetrated upon the captured crew, or improperly separating them from the prize vessel, or not producing them for examination before the prize court, or other torts injurious to the rights or health of the prisoners, may render the arrest of a vessel or cargo as prize defeasible, and also subject the tort-feasors to damages therefor. But the law does not constitute those acts or omissions legal bars to the suit, and it is plain that the course of investigation into those matters would not naturally be anticipated from the shape of a prize suit, nor could they be inquired into with that fulness befitting the gravity of the imputations or their importance to the public service, or the rights of individuals, so well and satisfactorily in summary and incidental proceedings, as in actions founded directly upon the injuries complained of.

The practice of prize courts supplies a course of procedure, under claims for redress, in cases of that description, which seems more proper to be pursued against public ships, when the consequences may also lead to other results than an award of pecuniary compensation to parties complaining of wrongs done them. A solemn monition may be directed to those using the authority of the government in seizing property at sea, compelling them to respond before the court to parties aggrieved by their acts, for every wrongful use of the authority confided to them; and thus, by pleas and allegations, the special grievances will be specifically charged and contested before the court, and



the evidence pertinent to the contestation can thus be collected and laid before the court on both sides. (The Eleanor, 2 Wheat., 345; The Magnus, 1 Ch. Rob., 31.)

Merely interposing a statement of grievances by way of schedule attached to the claim of ownership, and the test oath which enables a party to contest a libel of information in a prize suit, is not placing the controversy before the court in such an authoritative shape that parties are at once compellable to treat the allegations or suggestions as in litigation thereupon. It may well afford foundation for either party to appeal to the discretion of the court to proceed and render justice in the matter summarily, in the exercise of that pervading jurisdiction which envelops prize proceedings. But, when there is reasonable cause to look for a more thorough representation of the occurrence referred to than will commonly be obtained from *ex parte* statements, given under impressions likely to be colored by the excitement of sudden capture, and the risks and inconveniences following it, I consider it the more reliable course of practice to require the evidence to be furnished under pleas and allegations, when it is offered in bar of the rightfulness of a capture as prize, or as foundation for an award of compensation in damages, because of irregularities or culpabilities of captors who are in the public service in making the seizure or dealing with the prize property whilst in their possession. In the Magnus, (1 Ch. Rob., 31,) Sir William Scott says, that "the proof required was of the most solemn nature, by plea and proof." The proceedings by pleas and allegations admonish the parties of the difficulties of their situation, and call for all the proofs their case can supply. (Wheaton on Captures, 284.)

It is to be remarked, in this case, that no evidence has been given on the examinations *in preparatorio*, or upon the papers of the vessel, showing any unlawful or irregular conduct of the captors in making the prize, or in the subsequent treatment of her crew or of the property arrested. The affidavit of the master, referred to as part of their claim by the claimants, is extra-judicial, and not testimony in the cause, and, if allowed by the court as notice to the libellants of charges impeaching the legality of the capture, cannot avail as testimony in the suit on the hearing. The like evidence was not permitted to have that effect in the case of the Jane Campbell. It was there only recognized as a basis for after summary proceedings, to establish the justness of the allegations, under the implied reserve that it could not, *per se*, sustain a decree against the captors for torts.

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The Louisa Agnes.

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Two notes in the log-book, apparently entered by the prize-master after the arrest of the schooner, state that he placed the mate and steward in irons on taking command of the vessel, and in the afternoon took the irons off for the day, replacing them for the night, and the next morning again removing them; alleging it to be discretionary with him to keep the men in irons day and night. No allusion is made by the men to the occurrence on their examination; and in such posture of the transaction the inference may be no stronger that the act was tortuous and unjustifiable, than that it was an excusable precaution against menaces or well-suspected refractoriness of the prisoners. It is manifest, also, that separating the master and others of the crew, and not bringing them with the prize into port and before the court, was not necessarily culpable of itself, and may have been justifiable from the condition of the vessel or that of her crew.

No other violation of the rights of the claimants, or of their own legal obligations by the libellants in seizing the vessel, is attempted to be shown by the proofs before the court, than the alleged irregularity of capturing her after she had been twice previously arrested and discharged by public ships for the same offence. Such relinquishment of an arrest by a captor, whether the first in order of time, or any after one in a series of consecutive arrests, whilst the vessel is *in transitu*, endeavoring to carry out a voyage illegal and culpable in its inception and purpose, amounts to no acquittance or condonation of the offence; and she remains under all her antecedent liabilities to the law, in like manner as if no imperfect interception of her voyage had been attempted. Great circumspection and precaution will, undoubtedly, be exacted in authorizing a second arrest, if any *bona fide* change of property intervenes between the arrests. (The Eliza and Katy, 6 Ch. Rob., 191.) But when the arrest was already justified by the facts, it would be a very trivial irregularity for one ship to correct the immediately previous errors of others, in releasing improvidently, once or again, a captured vessel taken *in flagrante delicto*. No just exception, therefore, lies to sending a vessel in to be proceeded against in prize, because she had been in manual custody on the charge previously, and liberated by the seizing officers without the mandate or authorization of a proper prize court. As before indicated, the proofs before the court in the suit supply adequate cause for the condemnation and forfeiture of the vessel and cargo, and sentence to that effect is, accordingly, ordered to be entered. The fraudulent attempt on the part of the claimants to violate the blockade incurs this judgment in

favor of the United States, although the claimants may be enabled to show that the captors have been guilty of irregularities and wrongs towards the prize or the ship's company, subsequent to her capture. The government, on general principles, would not be debarred from vindicating their rights under the law of nations, against the criminal vessel and cargo, if it were proved that the captors, after making the prize, had, on their part, been also guilty of irregular and culpable conduct towards the prize property or crew. In that respect the court will sedulously administer the same measure of relief to injured parties, against captors acting in the public service, that is supplied by the law in relation to private cruisers. Yet, there may be reasonably observed differences in the method of enforcing it, because, in the case of public vessels, the ship's company are subject to the direction and authority of officers outside of those commanding the particular one engaged in the capture, and may be entitled by law to exemptions from personal responsibility, which could not be set up by the voluntary wrongdoer. Besides, the act for the better government of the navy subjects any person in the navy, for misconduct in relation to prize property, to forfeiture of his share of the capture, and such further punishment as the prize court shall impose. (2 U. S. Stat. at Large, 46, art. 8.) In such cases, it seems to me, there is a special fitness in requiring that the right of reclamation for damages, in cases of capture made by public vessels, should be pursued by the parties averring the grievance and tort committed upon them, by plea and proof, which admit of counter allegations and full evidence under them. This will be the course of practice to be hereafter followed in like cases, unless otherwise specially ordered by the court.

It is accordingly directed, that, within ten days after the entry of this decree, and notice thereof to the proctors for the claimants, they sue out a monition to the captors in this suit or their proctors, and file in court and serve on such proctors the allegations and proofs upon which relief is claimed in such proceeding, and that the captors, through their proctors, be allowed twenty days to file their answer and proofs in reply thereto, each party being entitled thereafter to bring the matter to a final hearing before the court, on two days' notice in writing.

If the conditions above stated are not fulfilled, either party, upon the default of the other therein, shall be entitled to have final judgment entered in the suit, and take such after proceedings therein as are consonant to law and the practice of the court.

## THE SCHOONER NED.

Part of vessel condemned, under the sixth section of the act of July 13, 1861, (12 U. S. Stat. at Large, 257,) as belonging to a citizen of a State in insurrection. That act is constitutional.

(Before BETTS, J., March, 1862.)

BETTS, J.: The libel of information charges that the collector of this port seized the schooner Ned, her tackle, &c., as forfeited to the United States under the provisions of the act of July 13, 1861, section six, as belonging, in whole or in part, to citizens of the United States in a state of insurrection. The libel was filed September 7, 1861. An amended libel, detailing more specifically the grounds of forfeiture, and alleging the vessel to be the property of Ely Murray, of Wilmington, North Carolina, was filed November 12, 1861.

Elzey S. Powell intervened, September 9, 1861, by sworn claim and answer, for himself, Ely Murray and others, to the original libel, avowing that the persons named and others were in possession of the vessel at the time of the attachment thereof, and that they alone are the true and *bona fide* owners of the schooner. No further answer was interposed to the amended libel specifically, but all the claimants named in the former claim, on the fifth of November, 1861, filed extended answers or pleas, embodying six specific exceptions, amounting to special demurrers, and also to a general issue to the libel.

The after proceedings in the suit before this court imply that the merits of the case are submitted for decision on the pleadings, with the addition of the exemplification of the register of the vessel offered in evidence by the district attorney. There is a technical incongruity between the language of the amended libel and the exceptions and demurrers, because, from the dates of their presentation to the court the defensive allegations seem to precede the presentation of the information demanding the forfeiture of the property. This was all well known to the counsel for both parties on the argument of the cause and the submission of the points in controversy to the consideration of the court.

Accepting the pleadings as taking effect in their due order, and that the libellants proceed for the forfeiture of the interest of Ely Murray, and remit all demands of condemnation against the interests of other part owners, it appears, from the pleadings and the certified copy of the registry found on board the vessel—

1. That at the time of her seizure she was in possession of Ely Murray and his co-claimants, as owners thereof.

2. It is alleged that she was owned in North Carolina, and that Murray was a resident of that State.

3. The information sets forth as facts all the particulars necessary to bring her within the provisions of the act of July 13, 1861.

4. The act itself, and the public acts of the government in relation to the existing rebellion within the United States, afford judicial notice that the matter comes within the purview of that statute.

5. In the opinion of the court, the act, if valid in law, authorizes and calls for the condemnation and forfeiture of the interest of the rebel owner in the vessel, unless the statutory provisions are in violation of the Constitution.

6. This court, in the case of Mary McRae, held this enactment to be within the legislative competency of Congress, and enforced its provisions.

It is ordered that the exceptions to the suit be disallowed and overruled, and that judgment be entered in favor of the libellants, forfeiting one-fourth part of the said vessel and her tackle to the United States.

The attorney of the United States having discontinued and remitted all claim in this suit for three-fourths of the value of the vessel and tackle, as belonging to loyal citizens of the United States, such amount of the proceeds is ordered to be restored to the claimants thereof.

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#### THE SHIP THOMAS WATSON AND CARGO.

The libel charged that the vessel, while attempting to violate the blockade, was burned, and that part of her cargo was saved as prize, but no proof was given in support of the libel. The court allowed the libellants thirty days to produce evidence, failing which the libel to be dismissed.

Where the testimony of witnesses from the delinquent vessel is dispensed with, adequate proof must be supplied, *alibunde*, of the *delictum* charged, before a condemnation will be awarded.

(Before BETTS, J., March, 1862.)

BETTS, J.: In this case a parcel of merchandise of small value is libelled as prize on the allegation that it was part of the cargo of the ship Thomas Watson, which, in attempting to violate the blockade of the insurgent States, was run on shore, set fire to, and burned, and that this portion of the cargo was taken from the said ship by the naval forces of the United States, and sent to this port in the United States ship Vandalia, for adjudication. It was here libelled by the United States for forfeiture, and arrested by the marshal, under process therein, as prize of war. The property is still held by the

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The Henry Middleton.

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marshal on that arrest, and due return is made by him of the seizure, and of public notice thereof. No claim or intervention is made in court for the property, and no proofs are given supporting the charges of the libel.

Although, in cases of absolute necessity, proceedings in prize may be prosecuted to effect without the observance of the formalities required by the prize rules, and the attendance and testimony of witnesses from the delinquent ship may be dispensed with, yet adequate proof must be supplied, *aliunde*, of the *delictum* charged, to enable the court to sustain the accusation. (*Jecker v. Montgomery*, 13 How., 498, and 18 Id., 110.) There is no legal proof that the lost vessel committed the offence alleged, or that this parcel of goods was part of her cargo. There is, therefore, no foundation laid for the exercise of prize jurisdiction over it.

The libellants will be allowed a reasonable time to furnish evidence of these facts, and, if they fail to produce such within thirty days from the entry of this order, the suit will be dismissed as not brought within the cognizance of the court.

Order accordingly.

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THE SCHOONER HENRY MIDDLETON AND CARGO.

Vessel and cargo condemned as enemy property, and for a violation of the blockade. None of the officers or crew of the vessel were sent into this port with her, or produced with her to be examined as witnesses, but the master subsequently appeared and was examined *in preparatorio*.

(Before BETTS, J., March, 1862.)

BETTS, J.: The prize in this instance was captured off the coast of South Carolina, August 21, 1861, by the United States ship *Vandalia*, and sent into this port, and here libelled September 5, 1861. No answer or claim has been interposed or prosecuted by any person.

The vessel and cargo were owned in Charleston, and sailed thence for Liverpool between the 6th and 21st of August, 1861. The master of the vessel knew that the port was blockaded, and the fact was also published in the Charleston papers. The ship's documents were furnished her by the rebel government at Charleston, and she sailed under the rebel flag. When she was chased by the *Vandalia*, the master of the prize threw overboard the private letters of the shippers of the cargo he was carrying, and also his deck load, to avoid capture.

Judgment of condemnation of the vessel and cargo is rendered, be-

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The Edward Barnard.

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cause the prize was at the time of capture enemy property, (*Jecker v. Montgomery*, 18 How., 110.) and also because she designedly evaded the blockade of Charleston harbor.

In this case none of the officers or crew of the captured vessel were sent into this port with the prize, nor were they produced with her to be examined as witnesses. This irregularity is substantially cured by the subsequent appearance and examination *in preparatorio* of the master of the vessel; and, moreover, no one appears to contest the validity and regularity of the capture.

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THE SCHOONER EDWARD BARNARD AND CARGO.

Cargo condemned as enemy property, and for a violation of the blockade. There was also a spoliation of papers, and the cargo was sent to sea in an enemy vessel. It is the usage of prize courts to exercise jurisdiction over property captured on board a vessel without having the vessel itself brought within their cognizance.

(Before BETTS, J., March, 1862.)

BETTS, J.: The schooner *Edward Barnard*, sailing in the name of a neutral and British subject, and laden with 600 barrels of turpentine, ran the blockade of the port of Mobile on the 10th of October last, and was captured on the 15th of the same month, in the Gulf of Mexico, by the United States vessel-of-war *South Carolina* as a prize. She was anchored by order of the captors off the outlet of the harbor, and her cargo, by order of the United States flag-officer, because of the insufficiency of the schooner and the heaviness of the weather, was transferred on board the United States storeship *Nightingale*, and brought in her to this port, and here libelled for condemnation. Whilst the schooner so lay at anchor, after her capture, a storm arose, and she became stranded and lost, and proceedings in court were only carried on against the cargo so seized and transmitted.

It is fully within the usage of prize courts to entertain and perfect their jurisdiction over property captured on board a vessel, without having the vessel itself brought within their cognizance. (Proceeds of Prizes of War, *Abbott's Adm. R.*, 495; 10 *American Encyclopedia*, 357, art. "Prize," by *Story, J.*; *Jecker v. Montgomery*, 18 How., 110; and 13 *Id.*, 498.) In many instances this mode of procedure is indispensable, as in the case of the capture of enemy property in neutral vessels, and when the enemy vessel is destroyed in capture.

The evidence *in preparatorio* clearly proves that the cargo belonged to residents of Mobile, and thus became enemy property and good

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The Sarah and Caroline.

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prize of war. The neutral owner of the vessel was also a mercantile resident of the latter place, carrying on trade there, which fact would render his vessel, so employed in aid and to the advantage of the enemy, subject to forfeiture. (*Jecker v. Montgomery*, 18 How., 110.) But the present proceedings only affect the cargo. Although the arrangements purported to convey title in the vessel to her master, yet it was all palpably factitious and colorable, as the ownership of the vessel was to return to the enemy vendor on his restoring to the supposed vendee the purchase engagement, no actual payment being made on the sale.

These facts transpired on the preparatory examination of the nominal purchaser. It was also proved by the preparatory depositions that a spoliation of papers relating to her cargo, and on board the vessel at the time of her capture, was made by her master and others. It was known at Mobile, by the master and all on board the vessel, when the vessel sailed, that the port was under blockade. The vessel watched her chance and got out covertly.

The proofs are abundantly satisfactory to show that the cargo was enemy property, and was sent to sea in an enemy vessel, the owner well knowing that the port of Mobile was at the time in a state of blockade.

Judgment is, accordingly, given, ordering the condemnation and forfeiture of the property arrested.

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THE SCHOONER SARAH AND CAROLINE AND CARGO.

Vessel and cargo held to be enemy property, on the papers found on board; but, no legal proofs being furnished of the actual capture, or of any inability to furnish proof of the time and place of seizure, a decree of condemnation was deferred, until such testimony should be produced, or an excuse be furnished for the admission of secondary proof.

There having been no appearance, on due return of the warrant of arrest of the cargo, and the capture having vested jurisdiction in the court over the property seized, the court ordered the cargo to be sold, and the proceeds to be brought into court.

The vessel was not arrested on the motion.

(Before BETTS, J., March 1862.)

BETTS, J.: The libel in this suit alleges that the schooner, with a cargo of sixty barrels of spirits of turpentine, was captured by the United States steamer *Bienville*, on the 11th of December, 1861, on the Atlantic ocean, off the mouth of St. John's river, Florida, and that they are prize of war.

The schooner, on survey, was at the time reported unseaworthy to be navigated in the winter season to a northern port, and her cargo



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The Joseph H. Toone.

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was transshipped December 20, 1861, on board the merchant brig Belle of the Bay, and brought to the port of New York.

The papers on the vessel, authenticated by the rebel authorities of Florida, show that the vessel and cargo were enemy property, and are, accordingly, both subject to condemnation and forfeiture; but no legal proofs are laid before the court of the actual capture of the same at sea, nor that any physical or moral inability existed to produce evidence of the time and place of seizure. Therefore, according to the ordinary procedure in a prize court, a decree of condemnation of the same must be deferred until such testimony is produced or a lawful excuse is furnished for the admission of secondary or lesser proof.

No appearance having been entered in the suit on due return of the warrant of arrest of the cargo, and the capture having vested jurisdiction in the prize court over the property seized, it is ordered that an interlocutory order for the sale of the cargo arrested in the cause be made, and that the proceeds thereof be deposited in the cause in the registry of the court, to abide the further order of the court.

No return of the arrest of the schooner on the monition is made to the court, and no order for her condemnation can be granted without ulterior proceedings in the action to that end.

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THE SCHOONER JOSEPH H. TOONE AND CARGO.

Motion by the owner of the cargo for leave to put in a claim to that, as neutral property, shipped from one neutral port to another, there being, in the proposed claim, averments denying that the vessel violated or attempted to violate the blockade, and invoking the test oath of the owner of the vessel previously made to his claim. The court allowed the claim to be filed, omitting the averments in question.

An answer or claim in a prize suit need contain nothing more than a general denial of the grounds of condemnation alleged in the libel.

The invocation of papers is to be obtained, not by pleading, but by motion.

(Before BETTS, J., March, 1862.)

BETTS, J.: The schooner Joseph H. Toone and her cargo were seized in the Gulf of Mexico, on the 1st of October last, by the United States steam ship-of-war South Carolina, as prize of war, and sent, with a prize crew, into the port of New York, and there libelled by the United States November 19, 1861. Proofs in *preparatorio* were regularly taken, and, on the 31st of December thereafter, William H. Aymer intervened, as a British subject, and claimed the vessel as owner, and alleged that various torts and wrongs were committed on him personally by the capturing vessel.

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The Joseph H. Toone.

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Delays were incurred in bringing the suit to hearing, from term to term, until the owner of the cargo applied to the court for leave to intervene for that, and put in his claim to the libel, and served a copy of his proposed claim upon the district attorney, with notice of a motion to the court to be allowed to file it by his attorney. He represents himself to be a Spanish subject, and a resident of Havana, and alleges that the cargo was Spanish property, shipped by him from one neutral port to another.

The district attorney objects to the clause proposed to be inserted in the claim by the claimant, denying that the vessel violated or attempted to violate a blockaded port; and also to his invoking the test oath of the owner of the vessel, made to his claim of ownership, and the schedules annexed thereto.

The application before the court is not one to change the ordinary method of proceeding by libel and claim into formal issues upon pleas and allegations. This would strictly be allowable only after a first hearing on the preparatory proofs, and for the purpose of bringing further proofs into the case. (Wheat. on Captures, 283.) The privilege now sought is for the owner of the cargo to make a general defence to the allegations of the libel. The special clause proposed to be made part of the claim, to that end, adds nothing to the rights of defence which enure to him on the most general appearance and opposition to the grounds of confiscation charged in the libel. The particular terms of the defence to be offered to the prosecution need not be specified in the answer or claim filed in opposition to a prize libel, all the evidence to obtain a decree of condemnation being, in the first instance, to be produced by the captors. The construction of the claim offered on the part of the owner of the cargo is, therefore, quite immaterial.

The suit is only to be litigated on the case made by the libellants; and it is only when that case affords grounds for conviction of the property seized, and is so pronounced by the court, that it becomes necessary for the claimant to show a defence through pleadings or proofs.

There is no legal relevancy in the invocation of papers set forth in the claim, proposed to be put in by the claimant of the cargo, because that relief is not attainable through pleading, but is granted only on motion, and at the discretion of the court. (Prize Rules, 30, 31, 32, and 33.) There being no necessity for, or pertinency in, the clause prayed by the claimant to be inserted in his claim, but it being need-

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The Gipseý.

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ful that he should interpose in the suit, and contest the demand of the libellants, and no unreasonable delay being shown in his so doing, it is ordered by the court that the claimant of the cargo captured be allowed to file forthwith his claim thereto in the suit, omitting therefrom, as inappropriate, the third clause of the same, objected to by the district attorney.

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THE SCHOONER GIPSEY AND CARGO.

Vessel and cargo condemned.

The vessel was pursued while attempting to violate the blockade. All on board of her escaped before she was taken. The court allowed other testimony to be given. Letters on board afforded a strong presumption that vessel and cargo were enemy property. No claimant intervened. It not being probable that the papers of the vessel, or any of her crew, or any further proof could be produced, the court decreed condemnation of vessel and cargo, the vessel having been appraised and taken for the use of the government in the Gulf of Mexico, where she was captured, and not having been brought within this district.

(Before BETTS, J., March, 1862.)

BETTS, J.: The yacht schooner Gipseý, and her cargo, were, on the 29th of December, 1861, pursued, in attempting to violate the blockade of New Orleans, by the United States vessel-of-war New London, the Wissahicon being also in sight. The officers and crew of the yacht escaped from her in their boat before she was taken possession of by the captors, and after setting fire to the prize. The cargo on board was sent by the captors to this port, and the vessel, being insufficient to make the voyage north, was appraised and taken possession of and used by the government.

After the cargo arrived here the district attorney, on an affidavit of the facts, moved the court for and obtained an order that Thomas W. Jackson be examined upon the standing interrogatories by the prize commissioners, with the like effect as if he were one of the witnesses prescribed by law, subject to any objections that might be made to his competency or credit. The case being regularly set down for hearing, and the proofs being clear that the yacht was seized in attempting to evade the blockade of the port of New Orleans, the strong presumption, from the written letters and memoranda found on board the vessel, being that she and her lading were both enemy property; and no party intervening to claim the said prize, although due service of process of monition was made according to the course in admiralty, and the impracticability of obtaining the regular papers of the vessel, or any members of her crew, to give evidence in the case, being made

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The Captain Spedden.

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clear, and it not being probable that any further proofs of the transaction can be produced before the court, because of the impediment of natural and physical causes, it is considered by the court that sufficient authority is shown for the condemnation of the said vessel and her cargo as prize of war. (*Jecker v. Montgomery*, 13 How., 515, 516.)

Judgment of forfeiture is accordingly given in favor of the libellants.

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THE SCHOONER CAPTAIN SPEDDEN AND CARGO.

Vessel and cargo condemned as enemy property, and for an attempt to violate the blockade. The vessel and cargo were taken for the use of the government, on appraisal, at the place of capture, in the Gulf of Mexico, and the vessel was afterwards lost at sea. The vessel and cargo were confiscable under the act of July 13, 1861. (*12 U. S. Stat. at Large*, 225.)

(Before BETTS, J., March, 1862.)

BETTS, J.: This schooner and her cargo were captured as lawful prize, on the 12th of January, 1862, in Biloxi river, by the United States steamer *New London*. The vessel and her cargo, consisting of lumber, were appraised under orders of Flag Officer McKean, of the United States navy, at Ship island, in the Gulf of Mexico, by a board of naval survey, and both were taken to the use and service of the United States, at such appraisal. The papers and documents found on board the vessel, with the official appraisement of the vessel and cargo, were placed before the court on the hearing of the cause.

A monition was issued against the vessel and cargo on the 5th of March, and returned duly served on the 18th of March, 1862, and, no person making appearance in the suit, or claiming the prize, the district attorney, upon the papers and preparatory proofs submitted to the court, moved for condemnation of the vessel and cargo as lawful prize.

The vessel was enrolled and licensed under the authority of the Confederate States, at New Orleans, April 27, 1861. She was owned by a naturalized citizen, resident at New Orleans, who left New Orleans in her, under a pass from the rebel authorities, November 30, 1861, and the cargo was laden on board, by the master and owner of the vessel, at Harrodsburg, on the Biloxi river, and near the town of Biloxi, in the State of Mississippi, with intent to be transported thence to Biloxi, on the bay of that name, and Gulf of Mexico. The vessel, after her arrest, was foundered and lost in a gale at or near Ship island, in the Gulf of

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The Express.

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Mexico. It was, accordingly, physically impossible to have her bodily in this port, to commence proceedings *in rem* against her, as prize.

The vessel evaded a blockaded port—New Orleans—to obtain, in another blockaded port, the cargo on board at the time of her capture, and was intercepted in her destination to another part of the same port. Had she been a neutral vessel, she would, therefore, not have completed the voyage out from New Orleans, so as to be discharged of the offence thereby committed. (The Christiansberg, 6 Ch. Rob., 382, and notes.)

This case also falls within the terms of the act of Congress of July 13, 1864. (12 U. S. Stat. at Large, 255.) The proclamation of the condition of the rebellion in the States of Louisiana and Mississippi was issued August 16, 1861, and this vessel having proceeded from one of these States to the other, and being there found laden with enemy property, both she and her cargo would come within the provisions of that act, as well as under the general rules of the prize law, for having violated or intending to evade the blockaded ports by a further voyage at sea. (See cases referred to in preceding decisions.)

Judgment of condemnation and forfeiture of the value of the vessel and cargo absolutely to the United States, conformably to the appraisalment, is ordered accordingly.

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THE SLOOP EXPRESS.

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Vessel condemned as enemy property, and for a violation of the blockade.

(Before BETTS, J., March, 1862.)

BETTS, J.: This sloop was captured in Lake Borgne, Louisiana, December 11, 1861, by the United States steamer New London, and, as in the last preceding case, the vessel was, after valuation by a naval survey, taken to the use and service of the United States. She was documented as a vessel belonging to the port of New Orleans, August 10, 1861. No cargo was arrested with the vessel. She was a fishing vessel, and owned, one-half in New Orleans, and one-half by her master, a native of Connecticut, residing in, and a citizen of, New Orleans, and was built in New London, Connecticut. The other half-owner also resides in New Orleans, and is an American citizen. She went out of New Orleans on a fishing voyage, and was to return to that port, and was destined to no other port. She left New Orleans December 7. Both owners knew that New Orleans was blockaded, when the vessel sailed. The vessel, after seizure, was taken down

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The Venus.

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to Ship island, and was stripped and sunk by United States officers there. She was of about 24 tons burden.

The master and crew were brought on to this port, and were examined in *preparatorio*. No appearance or defence was made for the vessel.

The vessel having left the port of New Orleans after that port was blockaded, with intent to catch a cargo of fish, and return with it to that port, for a market, and being herself enemy property, seized at sea, was subject to condemnation and forfeiture, and judgment to that effect must be accordingly ordered.

The appraised value at which she was accepted by the United States, and devoted to the public use and service, will be regarded by the court as her value, and that amount will be decreed forfeited to the libellants.

Decree accordingly.

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THE SCHOONER VENUS AND CARGO.

Vessel and cargo condemned as enemy property, and for an attempt to violate the blockade.

(Before BETTS, J., March, 1862.)

BETTS, J.: This vessel was arrested, as prize, in the Gulf of Mexico, off the State of Texas, December 26, 1861, by the United States Steamer Rhode Island, and, being of small value, and unfit to send by sea to a northern port, was surveyed and valued by a navy board appointed for the occasion by a flag officer of the United States navy, and, on such valuation, was, by such officer, appropriated and applied to the use and service of the United States. The vessel was employed in the coasting trade between the Confederate States, and was enemy property, and was laden with a cargo cleared at Point Isabel, a port of Texas, for Franklin, in the State of Louisiana, but destined to Brunswick or New Orleans, consisting of lead, copper, tin and wool, all being enemy property. The prize was carried to Ship island, and the cargo was there transhipped, by order of Flag Officer McKean, of the United States navy, on board the United States ship Supply, and, in charge of a prize-master, was brought into this port, as prize. The master and crew of the Venus were, at the time of her seizure, taken on board the United States steamer Rhode Island and transported to Philadelphia, and thence sent to New York, and here examined in *preparatorio*, before the prize commissioners. The master was part owner of the cargo, and knew of the war with the United States when the

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The Jane Campbell.

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schooner sailed, and that the whole southern coast was under blockade at the time. The schooner sailed under the rebel flag. No party appeared in court to claim the prize or defend the suit, after processes of attachment and monition therein had been duly served. On these facts there is clear proof that the schooner was lawful prize, both because she was enemy property, and because, at the time, she was pursuing a voyage with design to violate the blockade known to her owner and the owners of the cargo to be in force.

The government having, for excusable causes, appropriated her to the public service, she remains under the jurisdiction of the court, and the libellants are entitled to recover her value fixed by the appraisal, and the decree will be entered in their favor for that sum.

The cargo transshipped to this port is condemned as lawful prize, and execution, according to due course of law, is to issue for its sale. The proceeds, when deposited in court, will be distributed according to the provisions of the statute in that case provided.

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THE SCHOONER JANE CAMPBELL AND CARGO.

The further proof introduced by the libellants, on leave, to show an intent to violate the blockade, held not to establish such intent.

(Before BETTS, J., March, 1862.)

BETTS, J.: On the decision of this case upon the preparatory proofs an order was granted by the court, at the instance of the advocates for the libellants, that they have leave to put in further proofs, "such further proof being limited to evidence tending to show that the voyage in question in this suit was set on foot and prosecuted by the claimant with intent, on his part, to violate the blockade in question in said suit."

The district attorney presented in court, and examined orally, under oath, Thomas E. Corson, John G. Williams, and William R. Hinman, neither of which witnesses, on his direct or cross-examination, testified to any fact within his knowledge, or to any declaration or admission of the claimant, tending to prove any culpable act or guilty knowledge of the claimant in respect to the alleged attempt to violate the blockade inquired about.

The testimony of the witnesses was directed to the impeachment or disparagement of the testimony of Captain Harris, of the schooner, given on his examination *in preparatorio*. Two observations must be applied to the attempt: 1. The impeachment of the witness is not

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The Henry Lewis.

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by positive evidence against his general integrity of character for truthfulness or individually, but by testimony which is claimed as evincing, by implication or inference, that he had acted as master of an American vessel, and that he must, therefore, have sworn falsely in asserting that he was a British subject at the time his testimony was given, because, as such, he could not be legally a master of an American vessel.

The testimony of the one witness to the circumstance of Harris having been in command of an American vessel is destitute of certainty or clearness as to time or manner; nor is the fact necessarily incompatible with his sworn assertion, that he was a British subject, so as to require the conclusion that his statement was wilfully false, and destructive to his credibility as a witness in this suit. I perceive nothing in the further proofs that calls for or justifies a rejection of the conclusion adopted by the court on the first hearing of the cause on the merits; and the application on the part of the libellants to recall or vary that decision is denied.

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THE STEAMBOAT HENRY LEWIS AND CARGO.

Vessel and cargo condemned as enemy property, and for an attempt to violate the blockade.

(Before BETTS, J., March, 1862.)

BETTS, J.: The steamboat and her cargo proceeded against in this suit were captured as prize in the Mississippi sound, off the Alabama coast, southwest of Pascagoula, November 28, 1861, by the United States steamship New London, and first taken to Ship island, in said sound. The steamer Henry Lewis and a part of her cargo were there appraised by naval surveyors, by order of the United States flag-officer at that port, and the same were, by his direction, appropriated to the use of the United States as necessary to the public service. The residue of the cargo was transmitted, by command of said flag-officer, to this port in the United States storeship Supply. The Henry Lewis was employed, at the time of her capture, in coasting voyages between Mobile and New Orleans, and was on a voyage from New Orleans to Mobile when arrested in this action, and had been in that employ ever since the war commenced. The cargo was laden in her at New Orleans, November 26, 1861. One of the private owners of the vessel resides in Indiana; the others in Mobile and New Orleans. She be



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*The Garonne.*

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longs to a company or association in New Orleans. The master and crew of the *Henry Lewis* knew, at the time, that those ports were under blockade. The vessel was enemy property; and it appears, by the bills of lading found on board the prize vessel, that all the cargo was shipped by resident dealers at New Orleans to assignees or consignees in other blockaded and enemy ports.

No person has intervened in the suit to claim the vessel or cargo or make defence to the allegations of the libel.

Upon this state of the proofs it is manifest that full cause for condemnation of the vessel and cargo has been established, either because both were enemy property at the time, or because they were employed in a voyage intended to violate the blockade of the port of Mobile.

Judgment to be entered accordingly.

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#### THE SCHOONER GARONNE AND CARGO

Vessel and cargo condemned as enemy property, and for a violation of the blockade.

(Before BETTS, J., March, 1862.)

BETTS, J.: This vessel, as in the last case, being of small value, and unfit, from her size and capacity, to be sent to a northern port for adjudication, was, on her capture off the port of Galveston, Texas, December 11, 1861, by the United States frigate *Santee*, Captain Eagle, commanding, ordered to be appraised by naval surveyors, and to be broken up and appropriated to the use and service of the United States, and her cargo to be forwarded to this port by the United States steamship *Supply*, and her master and crew by the United States steamship *Connecticut*.

The vessel and cargo were owned by a citizen and resident of New Orleans. The cargo was consigned to a resident in Brownsville, Texas. The master knew that New Orleans was under blockade, and that the coast of Texas was also, but he had no personal warning of the fact.

No claimant interposes to make claim to or defend the vessel or cargo in this suit. The evidence, on the ship's papers and the preparatory proofs, leaves no ground to doubt that the vessel and cargo were both enemy property at the time of capture, and also had, on that voyage, intentionally evaded the blockade of the port of New Orleans with intent to enter and violate the blockade of the port of Brownsville, in Texas. Both are accordingly condemned as prize of

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The Delta.

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war. The proceeds of the vessel are to be decreed to be paid into the registry of the court for distribution pursuant to law; and execution is to be awarded to make sale of the cargo arrested, and, on return of the proceeds thereof into court, they will be distributed, with those of the vessel, among the captors.

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## THE BRIG DELTA AND CARGO.

A test oath is an oath of ownership simply, and all papers annexed to such oath will be stricken from the record as irregular. The fact of the ownership, with a general denial that the captured property is lawful prize of war, is all that it is proper to include in the claim.

A mortgagee of captured property has no right to assert his mortgage in a prize court, and demand its payment out of the proceeds of the property if condemned. All liens upon captured property, which are not in their very nature open and apparent, like that for freight upon the cargo laden on board a captured vessel, are utterly disregarded by prize courts.

Property belonging to a merchant residing and trading at an enemy port is, when captured, liable to condemnation as enemy property. The evidence discussed, showing that the transfer of the vessel by an enemy to a neutral was colorable and not real.

A transfer of an enemy vessel by an enemy to a neutral during the war, and for the purpose of her continuance in trade with the enemy, is void, even though made in good faith and for a valuable consideration.

The true destination of the vessel in this case was not disclosed upon her papers. The defence set up that the vessel made inquiry at a neutral port as to the blockade, and was informed that it had been raised, and then directed her course towards a blockaded port in order to make inquiry there as to the existence of the blockade before attempting to enter, shown to be groundless.

A contingent destination to a blockaded port, if it in fact existed, must appear on the ship's papers.

Where knowledge of a blockade exists at the commencement of the voyage of a vessel, she cannot lawfully approach a blockaded port, even for the *bona fide* purpose of inquiring as to the continuance of the blockade; and, if she does, she is liable to capture.

Vessel and cargo condemned.

(Before BETTS, J., April, 1862.)

BETTS, J.: The brig Delta was captured on the 28th day of October, 1861, while attempting to enter the blockaded port of Galveston, in Texas, by the United States ship-of-war Santee, commanded by Commodore Henry Eagle, and sent to the port of New York for adjudication. A libel was filed in this court, containing the usual averments of the capture as lawful prize of war, and praying for a decree of condemnation of the vessel and cargo, on the 27th of November, 1861. On the 17th of December thereafter, Seth Adams and Isaac Adams, citizens of Massachusetts, intervened and claimed the vessel, as assignees of Charles W. Adams, the mortgagee of the vessel, for the sum of £1,900 sterling. They alleged that, at the time of the capture, the said Charles W. Adams, the mortgagee, and the assignor of the mortgage, was in possession, under a charter-party between himself and the mortgagor, one John A. Marsh, of Liverpool, England.

The claim contains a general denial of the validity of the capture, and is supported by the test affidavit of Isaac Adams, one of the claimants.

On the 7th of January, 1862, John A. Marsh, of Liverpool, England, a British subject, intervened, through Williams, the master, and filed his claim as owner of the vessel.

On the same day, and by the same proctor, Charles W. Adams interposed his claim to the cargo laden on board the brig, as its sole owner, and to the vessel, as charterer for the voyage; and also set up an interest sought to be covered by the transaction, which it is supposed was secured and effectuated in his after arrangements with and through the two other claimants, his brothers, Isaac Adams and Seth Adams.

The points developed upon the direct issues in the suit, through the preparatory proofs, and the vessel's papers found on board at the time of her seizure, have been pressed upon the court by the respective counsel, in oral and written arguments of great thoroughness and force, in which they have been allowed by the court a range of debate beyond the ordinary measure of judicial discussions.

Under the decision of the court in previous cases, the voluminous matter sought to be introduced by the claimants in this case, by way of notarial protest annexed to the test oath, is to be stricken from the record, as irregular and inadmissible in a prize proceeding. The test oath in a prize cause is the oath of ownership simply, and the fact of this ownership, with a general denial that the captured property is lawful prize of war, is all that it is proper to include in the claim.

In the course of the argument, the counsel for the captors cited and commented upon the following authorities: *The Spes* and *the Irene*, 5 Ch. Rob., 76; *The Betsey*, 1 Ch. Rob., 332; *The Neptunus*, 2 Ch. Rob., 110; *The Little William*, 1 Acton, 141; *Wheaton on Captures*, 343, 353 to 355; *Wheaton's International Law*, 345; 2 *Wheat. R. App.*, 4; *The Hiawatha*, U. S. dist. court, N. Y.; *The Revere*, U. S. dist. court, Mass.; 1 *Kent's Comm.* 149, 153; *Yeaton v. Fry*, 5 Cranch, 335; *The Maryland Ins. Co. v. Woods*, 6 Cranch, 29; *Fitzsimmons v. Newport Ins. Co.*, 4 Cranch, 185; *Radcliff v. United Ins. Co.*, 7 Johns., 38; *The Diana*, 5 Ch. Rob., 67; *The Twilling Riget*, Id., 82; *The Tobago*, Id., 218; *The Marianna*, 6 Ch. Rob., 24; *The Charlotta*, 1 Edw., 252; *The Ann Green*, 1 Gall., 293; *The Frances*, 8 Cranch, 418; *The Betsey*, 1 Ch. Rob., 98; *The Mentor*, Id. 181; *The Sarah Christina*, Id. 339; *The Aquila*,

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The Delta.

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Id., 37; *The Hope*, 4 Ch. Rob., 215; several Dutch schuyts, 6 Ch. Rob., 48.

The counsel for the claimants cited the following authorities: *The Little William*, 1 Acton, 141; *Yeaton v. Fry*, 5 Cranch, 335; *The Maryland Ins. Co. v. Woods*, 6 Cranch, 29; *Fitzsimmons v. The Newport Ins. Co.*, 4 Cranch, 185; 2 *Elliott's Diplomatic Code*, 665; *Ibid.*, 528, 530; *Wheaton on Captures*, App., 343, 352 to 355; 3 *Wheat. R.*, App., 4; *The Henrick and Maria*, 1 Ch. Rob., 148; *The Ira*, 18 Jurist, 682; *The Constantia Harlessen*; *Edw.* 232; *The Belvidere*, 1 Dods., 356; *Conklin's Pr.*, 374; *The Die Jungfer Charlotta*, 1 Acton, 171; 3 *Phillimore's Int. Law*, sec. 311; *The Columbia*, 1 Ch. Rob., 154; *The Dickenson*, 1 H. and Mar., 1; *Flanders's Mar. Law*, 168, note 3; *Radeliff v. United Ins. Co.* 7 Johns., 38; *S. C.*, 9 Johns., 277; *Phillips on Ins.*, 3d ed., 459; *Sherry v. The Delaware Ins. Co.*, 2 Wash. C. C. R., 243; *The Shepherdess*, 5 Ch. Rob., 264; *Del Col v. Arnold*, 3 Dall., 333; *Die Fire Damer*, 5 Ch. Rob., 357; *The Maria Powlona*, 6 Ch. Rob., 237; *The Fortuna*, 2 Ch. Rob., app.

Preliminary to the main question of prize or no prize, to be determined upon the proofs, is one in relation to the character of the claim of Isaac and Seth Adams and their right to assert the same as against the libellants and captors. Although the conclusion at which the court has arrived upon the main question cannot be affected by a determination as to the right of a mortgagee of captured property to assert his mortgage in a prize court, and demand that it be paid out of the proceeds of the property, if condemned, it is, nevertheless, proper to consider that question.

Charles W. Adams, being the sole owner of the brig, executed a bill of sale to the claimant Marsh, in Liverpool, and took back from him a mortgage, to secure the purchase money, amounting to the sum of £1,900 sterling. The claimants, Isaac and Seth Adams, come into court solely as the holders and owners of this mortgage.

There is, perhaps, no doctrine better settled in the law of maritime capture than this, that all liens upon captured property, which are not in their very nature open and apparent, (like that for freight upon the cargo laden on board a captured vessel,) are utterly disregarded by prize courts. The great principles of international law in respect to prize require that no such liens, no mortgages, no bottomry bonds, no claims for repairs, supplies or advances, should be allowed to cover and protect private property while sailing on the ocean. If the door was

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once opened for the admission of equitable claims and liens, there would be no end to discussion and imposition, and the simplicity and celerity of prize proceedings would be alike sacrificed. (The Francis, 1 Gall., 445, and 8 Cranch, 354; The Josephine, 4 Ch. Rob., 25; The Tobago, 5 Ch. Rob., 218; The Marianna, 6 Ch. Rob., 24; The Sisters, 5 Ch. Rob., 155; the Vrou Anna Catharina, 5 Ch. Rob., 161.)

The claim, therefore, of the brothers Isaac and Seth Adams, is one which cannot be regarded in this court. The points at issue, upon which the validity of the capture must rest, are these :

1. Was the captured property, or any portion of it, the property of the enemy, or was it the property of a neutral, or of a loyal citizen ?

2. Was the destination of the vessel disclosed by her papers her true destination, or was it simulated and fraudulent ?

3. Did the vessel approach the port of Galveston knowing the same to have been effectively blockaded at and prior to the commencement of her voyage, with the *bona fide* intent to inquire if the blockade was still in force, and not to attempt an entrance without such inquiry ; or did she approach, designing to enter, if possible, without inquiry ?

4. Knowing of the effective blockade at and before the commencement of her voyage, could the vessel lawfully approach the very mouth of the blockaded port, even for the *bona fide* purpose of inquiry ; and was not such approach, under the circumstances, an unlawful act, subjecting the captured property employed in it to confiscation ?

1. Upon the first point—the question of ownership—were there any doubt as to the conclusion which must be reached upon the other points in the case, it might be considered that a proper case was presented in which an order should be made for further proof solely as to the residence of Charles W. Adams, the owner of the cargo of the vessel, and of the vessel herself, at the commencement of the war, and until August 31, 1861. It may be presumed, from the statements which have been made, that such further proof would disclose the fact that Adams was a merchant, resident at Galveston, in Texas, and that he now has a house of trade there, and a partner there domiciliated. Assuming these to be facts susceptible of proof, it is very clear that the captured property is liable to condemnation, as enemy property.

The transfer of the vessel by Adams to Marsh, a British subject, is open to grave suspicion, as colorable and false. There is neither proof nor assertion of the payment of any consideration upon the alleged

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transfer, and the inference that no payment was in fact made would seem to be justly deducible from the fact that a mortgage was retained for £1,900 sterling—certainly not far from the value, when new, of a vessel of the description of the Delta.

The pretended vendor of the vessel, in addition to the mortgage, received from the pretended vendee, at the same time, a charter-party of the vessel for the voyage, and the terms of this charter-party, as to possession, as to payment, as to insurance, and, indeed, as to all its provisions, are such as to preclude the idea of any real interest in the property in the claimant, Marsh.

The purpose of the transfer is apparent from the facts concomitant and subsequent. It was to give the vessel the semblance of a neutral bottom, while she was actually navigated in the interest of a belligerent party for the purposes of trade with, and aid and benefit to, the enemy of the captors.

But, supposing the transfer to Marsh to have been made in good faith and for a valuable consideration, such a transfer could, upon the assumption as to the residence of Charles W. Adams, have no validity; because, being made by one whom the law clothes with a hostile character by virtue of his residence, and being made to a neutral during the war, and, as the sequel shows, for the purpose of continuing in the trade with the enemy, the transfer was void, as in fraud of vested belligerent rights, and, having no validity whatever, the vessel remains in the same position in law as if the title to her had never passed out of Charles W. Adams.

2. Was the destination of the vessel disclosed by her papers her true destination, or was it colorable, false and fraudulent; and did the vessel approach the port of Galveston, Texas, knowing the same to be effectually blockaded at and prior to the commencement of the voyage, with the *bona fide* intent to inquire if the blockade was still in force, and not to attempt an entrance without such inquiry; or did she approach designing to enter, if possible, without inquiry?

These two points are intimately connected. Much of the evidence in the case having a bearing upon the one, is alike applicable to the other. The answer to the one question necessarily involves the answer to the other, and they will be considered together.

In the examination of the question as to the true or simulated destination of the vessel, as disclosed by her papers, the first thing which presents itself is the extraordinary fact, that a portion of the papers designate Minatitlan as her port of destination, and a portion the port

of Matamoras—two Mexican ports many miles apart—the one being in the Vera Cruz province, and the other on the river which separates the United States from Mexico.

Now, it is of course perfectly credible that in the incipency of the adventure the destination of the vessel might have been in good faith changed, and the incongruity in the papers be thus fairly explained. But this incongruity assumes importance when considered in connexion with the other circumstances of the case, all tending to show the fraudulent character of the documented destination. It is then that the question becomes significant. Does not the fact that a portion of the vessel's papers designate Minatitlan as her port of destination, and a portion Matamoras, have a strong tendency to show that her true destination was neither the one port nor the other?

The master and the supercargo both assert, in their examination on the standing interrogatories, that the vessel was destined to Matamoras. But upon material points their testimony is so conflicting as to be unreliable upon any; and whether the destination were Minatitlan or Matamoras, the vessel, from the time of her entry into the Gulf, had been pursuing a course many miles wide of either port, and when captured was close into Galveston, and steering directly for that harbor.

By way of explanation of the locality of the place of capture of the vessel, it is set up, not as in some cases, that she was driven there by stress of weather, or for want of water or provisions, but that the vessel stopped at the island of Grand Cayman, and there made inquiry as to the blockade, and was there informed that it had been raised, or there received some information to that effect, and that this caused the alteration in the vessel's course.

Now, if this explanation turns out, upon investigation, to be untrue, it affords a very conclusive presumption of the actual criminal intent of the vessel at the outset.

Grand Cayman is an island in a group of three, which together contain a fishing population of about 300 souls, lying about one hundred and fifty miles northwest of Jamaica. Is it credible that the vessel should pass by the numerous British ports of commercial importance in Jamaica for the purpose of inquiry at this petty island, whose humble inhabitants had probably never heard even of a war in the United States? But this is averred in the claims; and, further, that there, at Grand Cayman, they learned that peace negotiations were in progress, and that they were hence induced to change their destination.

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The testimony *in preparatorio* completely disproves this. The master swears, answering the 12th interrogatory: "The vessel touched at Grand Cayman, in the West India islands. We stopped there to get information; we wanted information as to the war in America. I heard that the parties were negotiating peace." The master is contradicted in this by the positive testimony of every other witness. Taylor, the supercargo, answering the same interrogatory, swears: "On the present voyage we stopped nowhere. We passed close to the island of Grand Cayman, but did not stop." And he says not a word as to any information got from the fruit boats which came off. Davidson, the mate, says, answering the same interrogatory: "We touched at no port or place after we left Liverpool before we were taken." He says nothing about Grand Cayman, or information there, or anywhere, received on the voyage, but, on the contrary, ignoring all this, he testifies as follows, when interrogated as to the alteration of the vessel's course: "The captain changed his mind. He called me and the supercargo into the cabin. They then made an entry in the captain's log-book to the effect that we would proceed to Galveston, and ascertain if that port was blockaded." Kent, the steward, in answering the 12th and 36th interrogatories, makes no mention of any stop made by the vessel on that voyage.

The log-book of the vessel, kept by the mate, contains careful daily entries of the vessel's course, distances, and position, and not only makes no mention of stopping at Grand Cayman, but shows the vessel to have been proceeding steadily on her way, day and night, at the very time fixed by the master as the time of her alleged stopping at Grand Cayman.

The captain's log-book is produced, containing the entry alluded to by the mate, and it is a notable circumstance that it is about the only entry contained in it. That it is a false entry is sufficiently established by the testimony before recited. It declares that the vessel stopped at Grand Cayman; that fruit boats came off; that they got no positive information, but were given to understand that peace was in negotiation. It further states that the alteration of the destination was "by direction of the supercargo."

It is impossible to consider the facts in proof, with all their attending incidents and circumstances, and arrive at any other conclusion than this: that the destination of the vessel declared by her papers was false and fraudulent, and that, from the beginning, she was bound to Galveston, not with any design of making honest inquiry before at-



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*The Delta.*

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tempting to enter, but with the deliberate purpose, on the point of being accomplished, and which the capture alone defeated, of entering that port, in spite and in violation of the blockade.

But, again, as matter of law, the falsity of the destination of the vessel, as set forth in her papers, is established by the fact that she is documented for a voyage to Matamoras or Minatitlan, disclosing no contingent destination to Galveston. If, as is averred, the voyage was undertaken with instructions to go to Galveston—if, upon inquiry, it was found that the blockade of that port was raised—then the ship's papers are false, because they fraudulently conceal the fact of the contingent destination to Galveston, and represent the destination to be absolutely to Matamoras or Minatitlan.

The dishonesty of purpose in the approach to the harbor of Galveston, which is so clearly established by all the circumstances of the case, is confirmed by the fraudulent omission to state on the paper the intent to approach it at all. In *The Carolina*, (3 Ch. Rob., 75,) Sir William Scott says: "Had there been any fair contingent deliberative intention of going to Ostend, that ought to have appeared in the bills of lading; for it ought not to be an absolute destination to Hamburg, if it was at all a question whether the ship might not go to Ostend, a port of the enemy. There is, then, an undue and fraudulent concealment of an important circumstance which ought to have been disclosed." (See, also, *The Margaretha Charlotte*, 5 Ch. Rob., 78, note.) The same principle is laid down in the late case of *The Union*. (1 Spinks' Prize Cases, 164.)

The evidence in the case thus plainly indicates that the voyage of the *Delta* was conceived with the fraudulent design of violating the belligerent rights of the United States, and, by evading the blockade established by authority of the government, to give aid and assistance to the enemy. To accomplish this, she was furnished with a simulated, neutral ownership, and with papers concealing her true destination and proclaiming a false one. Being captured at the mouth of the blockaded port in the attempt to enter it, hundreds of miles away from her course to the port of her ostensible destination, a story is invented, by way of explanation, which turns out to be utterly false, a mere fabrication, and therefore tending only to cumulate the proof of culpability and dishonesty.

Upon the second and third points at issue, then, the court can entertain no doubt of the validity of the capture, and of the necessity of decreeing condemnation of both vessel and cargo.

4. Knowing of the effectual blockade of Galveston at and before the commencement of the voyage, could the vessel lawfully approach the very mouth of the blockaded port, even for the *bona fide* purpose of inquiry, and was not such approach, under the circumstances, an unlawful act, subjecting the captured property employed in it to capture and confiscation? This point is distinctly raised by the arguments of counsel in the cause, and is legitimately developed by the proofs and papers, as well as by the claims. It is, therefore, proper that it should be passed upon by the court, although its determination may not affect the result in this suit, by reason of the conclusion arrived at upon the previous points.

It is conceded—and if not, it is a part of the history of the case, and sworn to by all the witnesses—that all concerned in the adventure had knowledge, full and complete, of the actual effective blockade of the port of Galveston, at and prior to the commencement of the voyage in which the vessel was captured.

It is well established by repeated decisions of Sir William Scott, the great master of British prize law, that a neutral trader cannot, with knowledge of a blockade, lawfully go to the station of a blockading force under the pretence of obtaining information as to its continuance. The inquiry must be made elsewhere, not there. "The merchant," says the learned judge, "is not to send his vessel to the mouth of the river, and say, 'If you don't meet a blockading force, enter; if you do, ask a warning and proceed elsewhere.' Who does not at once perceive the frauds to which such a rule would be introductory? The true rule is, that after knowledge of the existing blockade, you are not to go to the very station of the blockade upon pretence of inquiry." (*The Spes and The Irene*, 5 Ch. Rob., 76; *The Betsey*, 1 Ch. Rob., 334; *The Neptunus*, 2 Ch. Rob., 110; *The Little William*, 1 Acton, 141, 161.)

The reason and necessity of the rule, as laid down by Sir William Scott, is too obvious to require argument in its support. Were it once relaxed, so as to allow the approach of neutral traders to the mouth of a blockaded port for the purpose of inquiry, the blockade of the ports of the insurgent States could not be made effective by the combined naval forces of all nations. Such a relaxation would operate as a universal license to the merchant vessels of the world to attempt to enter a blockaded port, for a failure to do so would be attended with no hazard.

The soundness of this principle has not been called in question by

any decision of the courts of this country, and its wisdom will probably be approved so long as a belligerent blockade is recognized in international law as a legitimate and efficient method of prosecuting a public war.\*

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#### THE SLOOP ADVOCATE AND CARGO.

Where a vessel captured as prize is appraised by a naval survey, and appropriated to the use of the United States, and her papers and crew are, with the appraisal, sent to this court, proceedings against her in prize are regular, although she is not brought before the court.

Vessel condemned as enemy property, and for a violation of the blockade.

(Before BETTS, J., April, 1862.)

BETTS, J.: This vessel, with her lading, was captured December 1, 1861, in Mississippi sound, off the coast of Mississippi, by the United States ship-of-war New London, and taken to Ship island, where, on appraisal by a naval survey, she was appropriated by the United States flag officer at that port to the military use of the United States, as necessary for that service. The appraisal, with the papers, the master, and part of the crew of the vessel, were sent to this port, and she was here libelled, in this suit, March 3, 1862.

The vessel belonged to her master, John Fallon, an Englishman, but a citizen of Louisiana, who has resided in New Orleans since 1857, but is not a married man. He regards Long Island, New York, as his real home. The vessel sailed from New Orleans, a blockaded port, under the rebel flag, and with a fishing license from the Confederate States, and was seized with these evidences upon her. She was engaged in fishing, and had no cargo on board when arrested, except the fish intended for sale on her return to New Orleans. The capture was about sixty miles east of New Orleans, and the master knew of the war, and that the southern ports were under blockade when he went out. The vessel had, in May previously, been warned, off Pensacola, of the blockade of the southern ports, and the master knew that New Orleans was blockaded when he went out of that port. The register and license under which the vessel was sailing when captured were issued under the rebel or Confederate States authority.

Upon these facts, the vessel and her equipments were enemy property, and had also been used to evade the blockade of the port of New Orleans, in her egress therefrom, on the adventure upon which

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\* This decree was affirmed, on appeal, by the circuit court, July 17, 1863.

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The A. J. View.

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she was seized. The proceedings against the property as prize are regular, without its being brought before the court, (Proceeds of Prizes of War, 1 Abbott's Adm. R., 495,) being in conformity with the mode of procedure in admiralty in seizures for forfeitures under the revenue laws. (Prize Rule, No. 24; District Court Admiralty Rule, No. 184; Supreme Court Admiralty Rule, No. 39.)

Judgment of condemnation and forfeiture will be entered, accordingly, with costs; and that the appraised value of the vessel be paid into court, in satisfaction thereof.

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THE SCHOONER A. J. VIEW AND CARGO.

Cargo and appraised valuation of vessel condemned as enemy property, and for a violation of the blockade.

(Before BETTS, J., April, 1862.)

BETTS, J.: The above vessel, owned by a citizen of New Orleans, and registered there by authority of the Confederate States, on the 20th of November, 1861, was captured by the United States public ship New London, on the 28th of November, 1861, in Mississippi sound, laden with a cargo of turpentine and tar. The cargo was the property of Black, the supercargo. Neither the manifest nor any other papers on board the vessel designate the voyage contemplated to be made; but it appears, from the testimony of the master and the mate, on their examination, and by the written parole given by the supercargo on the arrest of the vessel, that the cargo and vessel were destined for Balize, in Honduras. The evidence in the case is unequivocal that the voyage was undertaken by the mutual concurrence of the owner of the vessel and the owner of the cargo, to evade the blockade at the port of New Orleans, and that they were both of them, at the time, residents of that place, and well aware of the existence of the blockade. The supercargo was an Englishman by birth, but had been, for many years prior to the seizure of the cargo, residing with his family at New Orleans, and doing business there. The owner of the vessel, though a native of the State of New York, had been for many years settled in business in New Orleans, and a resident there with his family. He purchased the vessel, and had her registered to him in his own name, and on his oath that he was a citizen of the Confederate States, on the 20th of November, 1861. (*Jecker v. Montgomery*, 13 How., 498; S. C., 18 Id., 110; *Fay v. Montgomery*, 1 Curtis C. C. R., 266.)

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*The Lizzie Weston.*

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After the capture, the flag officer of the United States squadron ordered an appraisement of the vessel, and appropriated her to the use of the United States government, and transmitted her cargo and officers, on the United States vessel Supply, to the port of New York, to the cognizance of the United States prize court. The prize was thus brought fully under the cognizance of this court. (Proceeds of Prizes of War, Abbott's Adm. R., 495.)

Upon the proofs in the suit produced by the attorney for the United States, no one appearing to contest the same, it is ordered that a decree be entered condemning the appraised valuation of the vessel and the cargo seized on board of her, with costs, and directing a distribution of the proceeds thereof, according to law.

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THE SCHOONER LIZZIE WESTON AND CARGO.

Vessel and cargo condemned as enemy property, and for a violation of the blockade.

(Before BETTS, J., April, 1862.)

BETTS, J.: This vessel sailed from Apalachicola, in January, 1862, under the rebel flag, laden with a cargo of cotton. She and her cargo were owned by residents of Florida, one of the Confederate States. She also had on board an English ensign, which the master was to hoist whenever directed to do so by the supercargo. She was documented by the Confederate States. Her destination was to Cuba, and back to a port in the Confederate States. She, however, has no specific limitation in her destination, but was to obey the directions of the supercargo as to her course. The owners of the vessel and cargo were on board of the vessel when she was captured. The seizure was made in the Gulf of Mexico, about one hundred and twenty miles off Apalachicola, by the United States gunboat Itasca. All on board of the schooner knew of the blockade of the port at the time she left it. The vessel on her capture was ordered to Philadelphia or New York, with her cargo, for adjudication; but while on that course, was compelled, by stress of weather and damage to the vessel, to put into Key West, where she arrived January 28, 1862. The schooner was there surveyed by authority of a United States officer, and reported to be in a bad condition to be navigated north. The cargo was transhipped to New York on board of the merchant vessel George W. Hull. The crew of the prize were despatched to the same port, as witnesses, by

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The Delight.

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the United States steamer Massachusetts, and were here examined *in preparatorio*. The vessel was left at Key West. A libel was filed in this court against the vessel and cargo March 18, 1862.

Upon the proofs, the vessel and cargo are subject to condemnation and forfeiture as enemy property. No claim was interposed in defence to the libel, and the cause was regularly defaulted in court; and if any objection might be offered because of a supposed outstanding interest of neutrals in the vessel or cargo, the testimony is conclusive of a wilful evasion of the blockade of the port of Apalachicola by both vessel and cargo in their egress from it.

A decree of confiscation must be entered accordingly.

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THE SCHOONER DELIGHT AND CARGO.

Vessel and cargo condemned as enemy property, and for a violation of the blockade.

(Before BETTS, J., April, 1862.)

BETTS, J.: This schooner, with a fishing seine and property on board of her, was captured, as prize, by the United States steamer New London, in Mississippi sound, on the 11th of December, 1861, fifty or sixty miles below New Orleans. The vessel was appraised by a naval board of survey, and appropriated to the use of the United States, on that valuation, by the United States flag officer in command in that vicinity, as necessary to the public service; and the property seized was transmitted by the seizing officer to this port, in the United States steamer Massachusetts, to be proceeded against within this jurisdiction.

The documentary title to the schooner shows that she was transferred from her American ownership, and enrolled and licensed to citizens of the Confederate States, in the port of New Orleans, in April, 1861. She came out of New Orleans having on board a pass from the confederate government, a rebel flag, and an old flag of the United States, which had been used on board of her before the rebellion. She left New Orleans the 2d of December, 1861. The vessel and the articles on board were the property of residents of New Orleans. All the crew on the schooner had known, for four or five months, that New Orleans was blockaded, and that United States vessels were lying before the place to maintain the blockade. The schooner was to return to New Orleans with the fish taken, for a market.

The vessel and her equipments being indisputably enemy property, having also evaded the blockade of New Orleans, and being engaged

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The Empress.

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in procuring supplies for an enemy port, to be conveyed thence for the use of public enemies, the vessel and all the property seized on board are subject to forfeiture for those causes.

Judgment entered accordingly.

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## THE BARK EMPRESS AND CARGO.

The requisites of a libel in prize, stated.

The proper form of a libel in prize is a mere general allegation of prize.

The practice in prize proceedings stated, as to the claim and test oath; the interest of the claimant in the property, and the inspection by the claimant of the ship's papers, and the proofs *in preparatorio*.

The defence, in the claim, must be limited to a contestation of the allegations of the libel.

The first hearing is limited to the inquiry, whether the captured property is prize of war or not.

It is irregular to subjoin to the claim anything besides a test oath.

Such irregularities will be corrected on motion, without formal exceptions.

(Before BETTS, J., April, 1862.)

BETTS, J.: A libel was filed in this suit, January 22, 1862, alleging that the vessel and cargo were captured, as lawful prize, in the Gulf of Mexico, off the mouths of the Mississippi, by the United States sloop-of-war Vincennes, November 21, 1861, Captain Marcy, of the navy, commanding; that the prize has been brought into this port, and is now within the jurisdiction of the court; that, by reason of the premises, all such property has become liable to condemnation and forfeiture, as lawful prize to the libellants; and that, therefore, process of the court is prayed against the captured property, and a condemnation thereof, as prize, by the decree of the court.

This is a regular and adequate method of pleading on the part of the libellants, and legally exacts all the answer which can be propounded to the charge that the property captured is lawful prize. (Mariatt's Formula, 159, 211; The Fortuna, 1 Dod., 81; 2 Wheat., App., 19.) The true form of libel ought to be a mere general allegation of prize, such as is used in undoubted cases of hostile property. ("Prize," by Judge Story, 10 Encyclopedia Americana, 364, section 15; The Adeline, 9 Cranch, 244, 284, 285; Halleck's International Law, chapter 31, sections 20, 22, 24.)

By the general practice in prize proceedings, a party entitled to claim the property captured may file his claim, accompanied by an affidavit stating briefly the facts respecting it, and averring the verity of the claim. A valid interest must subsist in the claimant. A mere stranger will not be permitted to interpose a claim, to speculate upon the chances of an acquittal. Nor, as a general fact, are parties

permitted to examine the ship's papers, or the preparatory proofs, in order to shape their claims, for that might lead to great abuses. But the court, on special application and sufficient evidence, will allow so many of the papers to be inspected as may be necessary to ascertain the particulars which should be embraced in the claims intended to be filed. This, however, would not import that the defence was, in form, to be shaped in reference to particulars. Its only effect would be to enable a claimant, before interposing in a suit, to become informed whether his interests would be embraced within the scope of the libel and his claim. The general doctrine with respect to the structure of the claim is readily gathered from the general principles which govern the line of defence allowed to claimants, and which are very clearly indicated by Judge Story in his treatise on prize proceedings. (10 Encyclopedia Americana, article "Prize," and especially article 15; see also Wheat., App., 500, 501; 2 Wheat., App., 20, 21; The Aina, 1 Spinks, 11; The Abo, Id., 47.) It is plain that the court, in adopting the prize rules regulating the practice of the court, (Rule 24, May term, 1861.) understood that the whole defence to be exhibited on the claim filed was simply a contestation of the allegations contained in the libel, (District Court Rule in Admiralty, 189.) and merely authorized the party to appear in court, and make opposition to a decree, on the allegations and proofs, on the first hearing. That hearing is limited to the inquiry, whether, upon the proofs drawn from the ship's company and her papers, with concomitant facts of which the court must take judicial cognizance, equally with the principles and rules of law, the captured property is prize of war or not. (The Amiable Isabella, 6 Wheat., 1.)

I think that all other matters than the test oaths subjoined to the claims filed by Pearson, Hopkinson, and Jackson are surplusage and irregular on practice. They are inadmissible as evidence on the trial, and cannot be made the foundation for further proof by either party in the present stage of the suit; nor without a special order of the court to that end could they be so used in any future form of proceeding between the parties.

The claim interposed by Moore and De Castro is unexceptionably brief in its form, but it is nugatory and irrelevant because it presents no issues for trial before the court, all the proofs in the case having been in court and on file before the claim was interposed, even were it competent for the parties to raise, on a first hearing in a prize court, a triable issue of facts to be supported by proof outside of those *in pre-*



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The Wave.

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*paratorio*, or found on the vessel. It is also vitally defective and irregular, because the right of the parties to intervene is not supported by test oaths, nor are the allegations set forth in that pleading either demurrers or pleas in bar to the action. The libellants might have excepted to these modes of pleading, but they are also entitled to a remedy more summarily, by motion, because of the palpable inaptitude and irregularity of these modes of proceeding in a prize suit.

The motion on the part of the libellants is accordingly granted. The parties are now entitled only to file claims verified by test oaths, establishing the interests they set up to the property captured.

Order accordingly.

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THE SCHOONER WAVE AND CARGO.

Vessel and cargo condemned as enemy property, and for a violation of the blockade.

The rules of practice in admiralty are the basis of the practice in prize in our national courts.

(Before BETTS, J., April, 1862.)

BETTS, J.: This vessel and cargo were captured, as prize, off Boca Chica and the coast of Texas, on the 1st of February, 1862, by the United States ship-of-war Portsmouth. The vessel was regarded as unfit for a voyage to a northern port, and remains in possession of the captors. The cargo was transmitted to this port on board the prize steamer Labuan, and the vessel and cargo were here libelled, on the 27th of March, for condemnation as prize. Due service of process of attachment having been made thereon, and no person intervening for the same, default has been prayed for and ordered, and, on the proofs submitted to the court, a decree of condemnation is moved against the vessel and cargo. (Prize Rule 24; District Court Admiralty Rules 35, 184; Supreme Court Admiralty Rule 46.)

The rules of practice in admiralty being the basis of the practice in prize in our national courts, and having been ordinarily, in the decisions of this court, referred to summarily as the fundamental authority in that respect, it is deemed appropriate to cite those rules textually: "As soon as may be convenient after the captured property shall have been brought within the jurisdiction of this court a libel may be filed, and a monition shall thereupon be issued, and such proceedings shall be had as are usual, in conformity to the practice of this court in cases of vessels, goods, wares, and merchandise seized and forfeited in virtue of any revenue law of the United States." (Prize Rule 24, May

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The Wave.

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term, 1861; Benedict's Pr., App., 392.) "On proclamation, after due return of process, the libellant shall be entitled to a decree of default or contumacy, according to the nature of the case, and the three proclamations heretofore used are abolished." (District Court Rules in Admiralty, 1838, Rule 35; Benedict's Pr., 364.) "All rules applicable to the service of, or proceedings in relation to, process in plenary causes in admiralty shall equally apply to process on informations." (District Court Rules in Admiralty, Rule 184; Benedict's Pr., 385.) "In all cases not provided for by the foregoing rules, the district and circuit courts are to regulate the practice of the said courts, respectively, in such manner as they shall deem most expedient for the due administration of justice in suits in admiralty." (Supreme Court Rules in Admiralty, Rule 46, 3 How., page xiii; 1 U. S. Stat. at Large, 276, sec. 2; 5 Id., 518, sec. 6.)

The schooner belonged to a Confederate State, and sailed in January last, under a rebel flag, from New Orleans. The master and crew were from the same place, and knew that the port was blockaded by the United States at the time. She sailed from that port for Brazos Santiago, with a cargo of sugar, tobacco, and rice, both vessel and cargo being owned in New Orleans. All the letters on board of the vessel were thrown overboard before her capture, all but one of them being directed to one Kennedy, of Brownsville, and the master was to deliver the cargo according to his directions. The vessel was built at Wilmington, North Carolina, and registered December 26, 1861, at New Orleans, as owned by citizens of that place, in the name of George McGregor, agent of the Calhoun Marine Company. The manifest of the cargo bore the same date, and was in the name of the same marine company, and was sworn to on the same day at the New Orleans custom-house, and the vessel was then cleared for Brownsville, Texas.

The proofs are clear that the capture was wholly enemy property, and had intentionally violated the blockade of New Orleans. The retention of the vessel for the use of the government was a matter at the sound discretion of the captors, her value being previously appraised and deposited in court. (Upton's Prize Pr., 3d ed., 437.)

Judgment of condemnation is accordingly rendered against the vessel and cargo.

## THE SLOOP OSCEOLA AND CARGO.

Vessel condemned as enemy property, having been appraised by a naval survey, and appropriated, at that valuation, to the use of the United States at the place of capture. Appraised value ordered to be distributed.

(Before BETTS, J., April, 1862.)

BETTS, J.: The above sloop sailed from New Orleans, under a license and pass from the Confederate States custom-house at that port, and under the rebel flag, about the 7th of December, 1861, and was captured on the 11th of that month, off Cat island, in the Mississippi sound, by the United States steamer New London. She was a fishing smack, and was appraised by a naval survey under the orders of the United States flag-officer at that post, and was retained, at that valuation, in possession of the captors, and appropriated to the use of the United States. The company of the captured vessel were sent to this port and examined as witnesses *in preparatorio*. The owner of the vessel resided in New Orleans. The master and crew knew that New Orleans was under blockade when she sailed from that port. She was to have returned to New Orleans with her catchings of fish.

No appearance or claim is entered by any one in behalf of the vessel or her tackle or cargo. It was in the fair discretion of the commanding officer to retain the prize in possession of the government. Upon the proofs it is adjudged that the vessel, her tackle, &c., be condemned to forfeiture as enemy property, and that the valuation thereof be deposited in the registry of the court for distribution.

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THE SCHOONER MARS AND CARGO.

Vessel and cargo condemned for an attempt to violate the blockade.

(Before BETTS, J., April, 1862.)

BETTS, J.: The vessel and cargo in this case were neutral, owned by a British subject residing in Halifax, and were captured as prize on the 5th of February, 1862, within a few miles of Fernandina, in Florida, by the United States steamer Keystone State. The schooner was running directly for that port, with a cargo of salt from Inguana, in the West Indies. When the master found that his vessel was pursued by the public ship, he threw overboard some letters or papers, as did also another of the ship's company—the steward, or a passenger on board. The master and owner of the vessel and cargo knew, as did

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The *Cheshire*.

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all the crew, that the ports of the southern States were in a state of blockade. The voyage purported to be to Halifax; the vessel was kept purposely wide of the true course for that port, under the suggestion that she designed to speak a blockading vessel and inquire if the blockade was still maintained. It is manifest, on the papers taken with the schooner and the preparatory proofs, that the outward and return voyages were planned and set on foot with intent to evade the blockade and run a cargo of salt into some port of the enemy. (Wheat. on Captures, ch. 6; Halleck on International Law, ch. 23.)

This is so palpable and irrefragable that no appearance or claim has been interposed in behalf of any claimant, but the proceedings have been suffered to go to a decree without contestation.

The interlocutory decree of condemnation having been regularly taken by default against the vessel and cargo, final judgment of condemnation and sale of the vessel and cargo is ordered accordingly.

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THE SHIP CHESHIRE AND CARGO.

A claim in a prize suit should be one of property merely, and should only put in issue, by a simple denial, the validity of the capture.

The papers found on board the captured vessel, and the testimony of the witnesses *in preparatoria*, can alone be considered on the hearing, in the first instance, in the determination of the issue.

A transfer of an enemy vessel by an enemy to a neutral, in an enemy port, during the war, is void.

In this case the vessel and cargo were falsely represented to be *bona fide* neutral property, when they were, in fact, enemy property, and as such liable to capture.

A contingent destination to a blockaded port must appear on the ship's papers; otherwise it will be presumed that there was a dishonest purpose in approaching such port.

In this case there was positive evidence of such dishonest purpose. The alleged purpose of making inquiry as to the raising of the blockade was a mere pretence.

A neutral vessel, with knowledge of the existence of a blockade, has no right to proceed to a blockaded port with the purpose of inquiring there as to the continuance of the blockade.

The inquiry must be made elsewhere than at the mouth of the port itself.

Vessel and cargo condemned.

(Before BETTS, J., May, 1862.)

BETTS, J. : On the 6th of December, 1861, the United States ship-of-war *Augusta* captured the merchant ship *Cheshire*, with her cargo, at sea, off the harbor of Savannah, Georgia. The captors sent her to the port of New York for adjudication in this court, as prize of war. A libel was filed on the 23d of December, and, on the 17th of January thereafter, claims were interposed on behalf of Joseph Battersby and William Battersby by Thomas Stone, who represents himself to have been a passenger on board the ship, and her supercargo for the

voyage. In these claims it is averred that the Battersbys are British subjects, and partners under the firm of J. & W. Battersby, and that the entire cargo was the property of the firm. The test oath to these claims is made by Stone. Various allegations, under the oath of Stone, are annexed to the claims, but they are wholly irrelevant to the issue, except as they may bear upon the question of the credibility of Stone, who was examined as a witness upon the standing interrogatories.

On the 8th of February following a further claim was filed, on the part of the Battersbys conjointly, by James Craig, the master of the ship, represented by the same proctor as before, in which it is averred that Joseph Battersby was the sole owner of the vessel, and that Joseph and William, as a mercantile firm, were sole owners of the cargo. To this claim also averments and charges are appended, of tortions and culpable acts on the part of the captors towards the vessel and cargo, and her officers and crew; and to this is added an elaborate instrument, in the form of a protest, reiterating and amplifying the said charges, made in the name of the master, the mate, and three of the crew of the vessel, before the proctor for the claimants, as a notary public.

In the case of the bark Express and her cargo, it has been adjudged in this court that such a mode of pleading in prize causes is irregular and improper; that the claim should be one of property merely, and by a simple denial putting in issue the validity of the capture; and that the papers found on board the captured vessel, and the testimony of the witnesses *in preparatorio*, can alone be read or considered on the hearing, in the first instance, in the determination of the issue. Such is the well-established rule. The reasons upon which it rests, and the authorities by which it is sustained, are set forth in the case alluded to, and need not be reiterated here. All these collateral statements and protests are, therefore, excluded from the case.

The grounds upon which the validity of the capture is maintained by the libellants are that the alleged neutral ownership of the captured property was simulated, and that the vessel was fitted out at Liverpool, England, and despatched thence on a voyage to Savannah, Georgia, with knowledge, on the part of the owners of vessel and cargo, that the port of Savannah was under blockade at the time, and with the purpose and intent of violating the blockade, which was only prevented by the capture.

On the part of the claimants it is insisted that the vessel and cargo are *bona fide* neutral property; that the voyage in question was hon-

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The *Cheshire*.

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estly set on foot by them, without the purpose of violating the blockade, and, indeed, without knowledge that it was still in force; and that to avoid misapprehension, the voyage was planned and prosecuted under the precaution and direction that the vessel should sail from Liverpool first to the vicinity of Savannah, there to inquire and ascertain if the port was still under blockade, and if not, to make that her port of destination, and there deliver her cargo; but if the blockade was found to be in force, to go to the British port of Nassau, New Providence. And it is further insisted that these directions were carefully and truly followed and adhered to by the claimants and their agents, and that the vessel was captured by the libellants on her arrival off the port of Savannah, without any warning being indorsed on the ship's register, or any direct previous notice having been given that the port was under blockade.

It will be seen that there are three questions involved in the issue between the parties:

1. Were the vessel and cargo *bona fide* neutral property, or was the nationality merely simulated as a cover or protection from the consequences of capture?
2. Was it truly the purpose of the vessel, on approaching the port of Savannah, to make an honest inquiry into the continuance of a known prior blockade before attempting to enter the port, or was it, on the contrary, designed to attempt to enter without speaking or being bespoken off the harbor, or making any previous effort to ascertain if the blockade were still maintained?
3. With the knowledge of the blockade possessed by the master and the owners of the vessel and cargo, in view of the character of her lading, and on the facts in proof, could she lawfully go to the port of Savannah, to inquire there as to the continued existence of the blockade?

*First.* As to the neutral ownership of the captured property. The *prima facie* evidence of this neutrality, as derived either from the ship's papers or from the testimony of the master and the supercargo, on their examination *in preparatorio*, is open to serious distrust.

The vessel was of American build, and had been in the trade between Savannah and Liverpool, conducted, from the time of the breaking out of the rebellion, substantially, if not entirely, by the present claimants, J. & W. Battersby. It is proved that instead of both claimants being residents of Manchester, England, as is averred, one of them was, at the commencement of the war, and ever since has

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The *Cheshire*.

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been, domiciled in Savannah, and engaged there in conducting the trade of that vessel between that port and Liverpool; and that he being thus domiciliated, and therefore having full knowledge of the state of war between the so-called Confederate States and the United States, of the imposition of the blockade on the port of Savannah, and of its efficiency, the vessel was laden in that port with a cargo, the produce of that country, and actually evaded the blockade of that port and transported her cargo to Liverpool; that voyage being the one next preceding the voyage upon which she was captured.

The American name of the vessel was the *Monterey*, of Savannah. She was furnished with a British register, under the name of the *Cheshire*, at Liverpool, on the 30th of August, 1861, about ninety days before her capture; and this constitutes the sole documentary evidence of a change of ownership. No bill of sale is produced, nor is there any evidence of the payment of a consideration for her alleged transfer. Stone, the supercargo, testifies (in answer to the 14th interrogatory) that the vessel was owned by Joseph Battersby. He thinks the bill of sale was given in Savannah by Brigham & Baldwin, or by their agents; and he thinks "it was some time last winter, on the passage from Liverpool to Savannah; they bought her to arrive." "I think this is the way the ship was bought." And, in answer to the 14th interrogatory, he says: "I know Mr. Battersby is the owner by the register, and I have heard him say he was."

Brigham & Baldwin, the former registered owners of the ship, were citizens of Savannah, and, as such, were, in law, public enemies at the time of the alleged transfer to Battersby as a British subject. Such a transfer, being in fraud of belligerent rights, could have no validity. Battersby, the alleged transferee, was a partner in a house of trade domiciliated in Savannah, the residence of the other partner. A transfer to him, therefore, of property thus employed in the trade of the enemy would wholly fail in divesting it of its hostile character under the law of nations.

But supposing, for the moment, that such a transfer might have been lawfully made, and that the property might by such transfer have become neutral, yet the reality and integrity of the transfer itself so essentially rest upon the testimony of the witness Stone that his evidence requires special attention.

He says that he is an Englishman by birth, but is an American citizen, and has for the last thirteen years resided with his family at Williamsburgh, New York; that he was on board at the time of the

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The Cheshire.

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capture, which took place nine or ten miles from Tybee, but does not know why the vessel was captured; that she belongs to Joseph Battersby, of Manchester, England; that the master, he thinks, was appointed by Mr. Battersby, in Liverpool, where he took possession of her in October or September last; that the vessel's company when captured consisted of seventeen persons, but he did not belong to the vessel's company, and "had no part, share of, or interest in the vessel or cargo;" and that the vessel sailed from Liverpool to Savannah some time the previous winter with a cargo of salt, and some time in May last back from Savannah to Liverpool with a cargo of cotton, and returned from Liverpool in October, on the voyage upon which she was captured. In answer to the 14th interrogatory, he says that he knew Battersby was the owner of the vessel from his own declaration and the register, but "does not know who owned the cargo; it was shipped by Charles Hill, of Liverpool;" and he adds, in answer to the 28th interrogatory, that "he supposes the shipper," Charles Hill, "would have owned the cargo when it arrived;" that the Battersbys reside with their families in England, and have always resided there; and that he resides with their families when in England. To the 39th interrogatory, he says that he has "stated all that he knows or believes relative to the true property or destination of vessel and cargo." These formal interrogatories were replied to by the witness, under the solemnity of an oath, on the 17th of January, 1862. On the same day the claim of the Battersbys is filed, accompanied by the test oath of this witness, who therein swears that "he has been in the employ of the claimants, Joseph Battersby and William Battersby, for upwards of four years, and that he was a passenger on board the ship Cheshire, and supercargo on the voyage on which she was seized, and makes this test oath, and deposes to the verity of the above claim."

Thus, by averments of long acquaintance, residence in their families, employment for years, and being supercargo upon this voyage, the witness displays his abundant means of knowledge as to the ownership of the cargo, and states, in the claim, to which he swears, that "all the cargo was owned by the claimants," the Battersbys; while on his examination as a witness by the commissioner, he swears that he "has no knowledge as to the ownership of the cargo," but supposes "that it would, on its arrival, belong to the shipper," Hill.

When it is considered that the good faith of the alleged transfer of the vessel from Brigham & Baldwin rests entirely upon the testimony of this witness, it may well be asked, whether such an irreconcilable



incongruity as this in his own sworn statements does not sufficiently impair his credit as a witness, to raise a very serious doubt of the good faith of the alleged transfer?

But the testimony of this witness, Stone, is not only thus impaired by the inconsistencies and contradictions of his own sworn statements upon material points, but upon other points equally material and relating to the questions of the honesty or culpability of the voyage, of the purpose to inquire at the mouth of the port before attempting to enter, and of the design and attempt to enter without inquiry, he is directly contradicted by another witness, examined *in preparatorio*, who is unimpeached, and who could have no motive or inducement to falsify from position or relationship to the parties, and whose evidence, entirely consistent in itself, and with all the known and conceded facts, is, moreover, confirmed by the vessel's journal or log. This testimony, in connexion with that of Stone, I shall advert to in considering the next proposition involved in the contestation. I here speak of it as evidence inherently reliable, which directly contradicts that of Stone. When added to his contradictions of himself, it casts such discredit upon his testimony (on which alone rests the averment of the neutral ownership of the captured property) as, in my judgment, to raise an impressive presumption that the vessel and cargo were falsely represented to be *bona fide* neutral property, while they, in truth, belonged, wholly or in part, to persons domiciled in the so-called Confederate States, and, therefore, to public enemies of the United States under the law of nations, and were, as such, liable to capture and confiscation. (Halleck on International Law, chapter 21, sections 1, 2, 3; Duer on Insurance, lecture 6, sections 1, 2, 3.)

*Second.* Was the voyage of the ship *Cheshire* from Liverpool to the port of Savannah, and her approach to that port, undertaken and prosecuted with the honest intent to inquire there if the blockade was still in force, and by no means to enter the port without making the inquiry; or, on the contrary, was the voyage set on foot and prosecuted, and was the port of Savannah approached, with the purpose and intent to enter without inquiry if a favorable opportunity should occur or could be made?

In entering upon this inquiry, the fact first presenting itself is not without its influence. The business of carrying cotton out of the port of Savannah, and, in return, taking needed supplies to the enemy within that port, in spite of the blockade, seems to have been the business to which the ship was devoted by her owners, and in which she was successfully employed until her capture.

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The *Cheshire*.

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But the averment of the purpose, in good faith, to go to the mouth of the port, and there make honest inquiry as to the blockade, and to deliver her cargo there, as her destined port, only in the contingency of finding, on inquiry, that the blockade was raised, is met by an objection which Sir William Scott, in a like case, regards as the most pregnant evidence of the falsity of such representation. The ship's papers disclose no such contingent destination. She was documented simply for a voyage to Nassau or Halifax, and back to a port in Europe. If the averment on which the defence rests be true, then the ship's papers are false, in fraudulently concealing the fact of the contingent destination to Savannah, and representing the destination to be absolute to Nassau or Halifax. The dishonesty of the purpose of the approach to the blockaded port of Savannah is clearly evinced by the studied concealment in the papers of the intent to approach it at all.

In the case to which I have alluded, (*The Carolina*, 3 Ch. Rob., 75,) Sir William Scott says: "Had there been any fair, contingent, deliberative intention of going to Ostend, that ought to have appeared on the bills of lading, for it ought not to be an absolute destination to Hamburg, if it was at all a question whether the ship might not go to Ostend, a port of the enemy. There is, then, an undue and fraudulent concealment of an important circumstance which ought to have been disclosed." (See, also, *The Margaretha Charlotte*, 3 Id., 78, note.) In a recent case, (*The Union*, 1 Spinks' Prize Cases, 164,) Dr. Lushington says that a ship's papers should show her destination to a blockaded port, in the contingency of the blockade being found raised upon her arrival, and otherwise should show her ulterior destination. This offence of clothing a vessel with false documents, which conceal her real destination, and set forth that as her absolute destination which is, in truth, but contingent, is justly regarded as sufficient cause for capture and confiscation.

This vessel, with papers on board which declare that her voyage is from the port of Liverpool to Nassau, New Providence, or to Halifax, Nova Scotia, and which do not disclose any destination as intended in any contingency, is found off the blockaded port of Savannah, in Georgia. Upon authority, the presumption of the dishonest purpose of the voyage, and of the dishonest approach to the blockaded port, arising from the papers, and in the absence of any explanatory proof, is conclusive. And here I might rest the second proposition. But there is positive evidence, in the testimony before me, of the dishonest purpose of the voyage, of such a character that I cannot pass it in silence.

The averred purpose of the approach to Savannah, for inquiry simply, and without design to enter without inquiry, is maintained by the positive testimony of the witness Stone. In reviewing the evidence of this witness upon another point, I have had occasion to show its unworthiness, resulting from its contradictions and inconsistencies, and have alluded to the fact that, upon the point I am now considering, it is in direct conflict with the testimony of a witness whose evidence is consistent in itself, and not only unimpeached, but confirmed by the conceded facts of the case. That witness is John Thornton, one of the crew of the ship, shipped at Liverpool as cook, but who afterwards served as cabin boy. He testifies substantially as follows: that Craig was only the nominal master; that Stone had the actual control on board; that Stone had been long a resident of Savannah, although his family was at Williamsburg, New York; that Stone informed the witness that he was engaged by Battersby at Savannah, where Battersby lived and carried on business, to take command of the vessel, in Liverpool, for this voyage back to Savannah, with the intention of running the blockade; that the crew were all hired by Stone, who received the vessel from Captain Norton, in September, 1861; that he, Stone, had informed witness that he owned the vessel, and had an interest in the cargo; that this was in New York, and since the capture; that he heard Stone inform Craig that the vessel ran the blockade on the preceding voyage, when commanded by Captain Norton, under the name of the Monterey, of Savannah; that the cargo, upon this voyage, was to have been delivered in Savannah to Mr. Battersby, who resides there, as did Stone also; that the existence of the blockade was well known to all on board; that on the night before she was captured, the lights of the vessel were all extinguished, and an attempt was made to run the blockade, but that, having failed upon that occasion to find the water sufficiently deep, the ship was put about and stood out to sea, till the following morning, when she again stood in for the port, and was captured about seven miles from Tybee; and that Captain Stone said, that if he could have got under the guns of Fort Pulaski he would have been safe; that the cargo cost \$30,000, and that, if he had been able to get into the blockaded port, he would have realized \$250,000.

No part of the testimony of this witness is inconsistent with the general evidence in the case, other than the conflict between his statements and those of Stone; and as to those differences there would seem to be no doubt, if he is entitled to full credit as to all the declarations and admissions imputed by him to Stone, that his contradictions

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The *Cheshire*.

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are so direct and positive to important statements made in Stone's testimony, that the court is bound to withhold belief from the latter.

Thornton is also corroborated, and the averments of Stone are discredited by the ship's log. Stone says that the vessel lay off the port of Savannah two days, and tried to speak three or four vessels, but could not. The log discloses the fact that vessels were present "all around," and states no attempt to speak any of them; nor does it make any allusion to the least difficulty in communicating with either or all of them, had it been desired. The log shows that the *Cheshire* had been tacking off and on, from early dawn of Thursday, the 5th of December, until the afternoon of Saturday, the 7th, and was actually in a position, at the time testified to by Thornton, to make the attempt to enter the port at night; which attempt Thornton swears was made, and failed for want of sufficient depth of water.

Upon the testimony, and upon all the facts in the case, the conclusion is unavoidable that the ship, with full knowledge of the establishment and efficiency of the blockade of Savannah, was despatched upon a voyage to that port, with a fixed design to violate the blockade and there deliver her cargo, if practicable; and that the alleged purpose of making previous inquiry was a mere pretence, having no real existence. This result is conclusive as to all the alleged rights of the respective claimants, and involves the necessity of condemning both vessel and cargo.

*Third.* With the knowledge of the blockade possessed by the master and owners of the vessel and cargo, and on the facts in proof, could the ship lawfully go to the mouth of the port of Savannah, for the purpose of inquiring there as to the continued existence of the blockade?

Although the conclusion to which the evidence has directed me upon the preceding propositions renders it unnecessary to decide this point in the case, yet it is proper to say, whenever the question arises, that it is *res adjudicata* in this court. In the case of the *Delta*, not long since argued and determined, the point arose and was decided.

The authorities are clear and conclusive that a neutral vessel, with knowledge of the existence of a blockade, has no right to proceed to the very port blockaded, with the pretended or actual purpose of inquiring there as to its continuance. It is the policy of the law to inhibit neutral vessels from assuming such positions with reference to the blockaded port, as must, of necessity, greatly increase the watchful-

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The Hannah M. Johnson.

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ness and activity of the naval force, and at the same time afford to the neutral vessel extraordinary facilities for a fraudulent evasion of the rights of a belligerent. It is well settled, that where the destination of a neutral vessel to a blockaded port is contingent upon inquiry, that inquiry must be made elsewhere than at the mouth of the port itself. In the case which I have cited in another connexion, (*The Union*, 1 Spinks' Prize Cases, 164,) Dr. Lushington says, that "where an excuse is set up that the vessel approached the blockaded port to make inquiry, it must be clearly proved by evidence perfectly satisfactory to the judgment of the court that she was ignorant of the fact of the blockade." Here no pretence of ignorance is set up; and, indeed, such pretence, in view of all the facts in proof, and especially of the violation of the blockade on the previous voyage, would be quite preposterous.

In the case of the *Delta* I considered, at length, the reasons upon which the rule is placed which prohibits neutral vessels from approaching the blockaded port to make inquiry, and reviewed the authorities which establish the doctrine. As the conclusion in this case is not exclusively or necessarily based upon this doctrine, I need only refer to what was there said, without reiteration.

The vessel and cargo, in this case, were, for the several reasons stated, lawfully captured, and a decree of condemnation must be entered accordingly.\*

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#### THE SCHOONER HANNAH M. JOHNSON AND CARGO.

The vessel having been restored, as belonging to loyal owners, and part of her cargo having been condemned as enemy property, captured on a voyage from New Orleans to New York during the war, the master of the vessel applied to be paid, out of the proceeds of the condemned cargo, the freight upon it for the voyage: Held that the application must be denied.

(Before BETTS, J., May, 1862.)

BETTS, J.: Portions of the cargo of the above vessel were condemned as prize by the court on the capture of the vessel and cargo. The vessel was acquitted and restored to the claimants, as belonging to loyal owners, and not having been employed by them in any unlawful acts against the government in withdrawing herself from the port of New Orleans and returning to her home port after the declaration of war by the seceded States against the United States.

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\* This decree was affirmed by the circuit court, on appeal, July 17, 1863. From the decree of the circuit court the claimants appealed to the Supreme Court, where the decree was affirmed March 5, 1866.

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The Hannah M. Johnson.

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Portions of the cargo shipped on board by traders domiciled in New Orleans and transmitted to New York were condemned and forfeited as being enemy property. The proceeds of that property remain in the registry of the court undistributed; and the petitioner, the master of the vessel, applies in that capacity for payment of freight out of the fund earned on the transportation of such part of the cargo on the voyage from New Orleans to New York.

The petition rests upon the assumption that the acquittal of the vessel from condemnation as lawful prize, necessarily admits also the legality of her employment in carrying the cargo, and her title to freight therefor. This is by no means a fact or a legal conclusion. The charges upon which the vessel and her lading were seized and tried were, that they belonged to the rebels, or, if neutral, had evaded the blockade of the port of New Orleans. The judgment of the court disaffirmed these charges, except in relation to that part of the cargo which was condemned as enemy property, and which was brought into this port. The vessel, in the transaction, did not act at all in the character of a neutral. If she had been, in fact, of neutral ownership, she would not have been permitted, under the rules of the prize law, to go into an enemy port and freight herself there *pendente lite* with enemy property. Such property is subject to capture at sea, though found in a friendly vessel destined to another friendly port. (1 Kent's Comm., 124; Halleck's International Law, 471; Wheat. on Cap., ch. 3, art. 9, 13.) This property would not, therefore, be exempt from capture on board a neutral vessel, had it been innocently freighted by the shipper, from one neutral port to another; and only on such condition would the carrier be entitled to recover freight from the captor for the carriage performed in its transportation. The undertaking of the master to transport the property from an enemy country was not, as to him, an innocent act. It was in aid of the commerce and trade of an enemy, and the rules of public law interdict as illegal all such transactions by subjects of a belligerent nation with those of its enemy. (Wheat. on International Law, 357; The Hoop, 1 Ch. Rob., 196.)

The court restored the vessel on this capture, on the ground that taking her from the port after the commencement of the war and the imposition of the blockade was not a proceeding for the benefit of the enemy, but was a withdrawal of home property by loyal citizens, in which matter the enemy had no beneficial interest. The principle in respect to enemy property laden in the vessel, and transported for the benefit of enemy owners, is entirely different. Not only is such prop-

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The J. G. McNeil.

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erty liable to confiscation, but the interference of the master, in aiding its conveyance from an enemy port for the benefit of its owner, is wrongful and illegal, and in violation of the rights of his government in the property, and of his own duties and obligations as a subject during war. This doctrine is declared and enforced most explicitly and inflexibly by the highest authorities in America and Europe. (1 Kent's Comm., 55, 66, 68; Wheat. on Captures, 220; 3 Phillimore's International Law, sec. 70; The Sally, 8 Cranch, 382; The Rapid, Id., 155; Wheat. Inter. Law, part 4, ch. 1, arts. 9, 13; The Hoop, 1 Ch., Rob. 196.) The petitioner is disqualified by his own act, in dereliction of his duties as an American citizen, in aiding and promoting the trade and commerce of the enemy, *flagrante bello*, from deriving any advantage against the government through his unlawful acts and agency. His application, therefore, to be allowed freight for the carriage of enemy property on the voyage in question, with knowledge of the character of the property and of the existence of the war, cannot be entertained.

The motion must be denied.

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THE SCHOONER J. G. McNEIL AND CARGO.

Vessel and cargo condemned as enemy property.

(Before BETTS, J., May, 1862.)

BETTS, J.: This vessel and cargo were captured off Matagorda, in the Gulf of Mexico, half a mile from the shore, January 25, 1862. Her registry and ship's papers were given to her by the government of the Confederate States at Indianola, Texas, where her owner and master reside. She sailed under the license and flag of the Confederate States, and had no other colors. She was captured by the United States man-of-war Arthur. The vessel was from Vera Cruz, destined to Indianola, with a cargo of coffee and tobacco, owned by residents of the latter place. The master knew of the proclamation of the President placing the southern ports under blockade, but had no other direct notice of the blockade. The cargo was laden on board at Vera Cruz about the 8th of January, last.

The prize was taken to Ship island, was pronounced unseaworthy for navigation north by Flag-Officer McKean, and was appropriated to the use of the United States government, her value having been appraised.

The evidence being clear and satisfactory that the vessel and cargo were the property of owners domiciled at Indianola, and the marshal having returned to the warrant of attachment due notice of the arrest of the property and of the proceedings in court against it as prize, its condemnation and forfeiture is ordered, the appraised value of the vessel to be accounted for in court to the credit of the captors.

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#### THE SLOOP PIONEER AND CARGO.

Vessel and cargo condemned as enemy property, and for an attempt to violate the blockade.

(Before BETTS, J., May, 1862.)

BETTS, J.: This vessel and cargo were captured, as prize, on the 20th of February, 1862, at the mouth of the Rio Grande, Texas, by the United States ship-of-war Portsmouth. It being deemed unsafe to send the vessel into port for adjudication, she was destroyed by order of the commanding officer, and the cargo was transmitted to this port by another vessel, and was here seized and proceeded against by due process of court, regular notice having been given to all parties interested, according to law.

The master of the vessel testified that he was present at her capture; that she was sunk, after the arrest, as being unseaworthy, and that her cargo was placed on the Rhode Island and brought to New York. The prize sailed under the confederate flag, and had no other, and was cleared by the confederate custom-house at New Orleans. Her cargo was tobacco, and she was cleared with it from New Orleans, where she was owned, for Brownsville, Texas. The cargo was owned and laden on board at New Orleans, and was enemy property. The owner of the vessel was also owner of part or the whole of the cargo. All persons on board the vessel knew, when the attempt was made to enter the port of Brownsville, that it was in a state of blockade by the United States, and had been from the time the blockade was imposed. No evidence is produced that the owners of the vessel or cargo had warning or particular notice that the port was then blockaded. The vessel was arrested two or three miles from the Texas shore while attempting to enter the port of Brownsville. The purpose of the vessel to go from New Orleans to Brownsville, notwithstanding the blockade, is clearly shown to have been entertained by the owners of the cargo and vessel from the time the voyage was undertaken.



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The Joanna Ward.

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The proofs are satisfactory that the vessel and cargo were enemy property, and subject to confiscation as such when arrested; and that, if any portion of the property be neutral, it was captured while making the attempt to violate the blockade of the port of Brownsville.

Judgment of condemnation is accordingly rendered against both vessel and cargo. •

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## THE SCHOONER JOANNA WARD AND CARGO.

Vessel and cargo condemned as enemy property, and for a violation of the blockade.

(Before BETTS, J., May, 1862.)

BETTS, J.: This vessel and cargo were captured on the 24th of February, 1862, off the port of St. Augustine, Florida, by the United States steamer Harriet Lane, and were sent into this port as prize. The vessel was documented January 6, 1862, as then owned, in Charleston, by Finlay & Patterson, citizens of that State, and had on board a bill of sale, purporting to have been executed by the said Finlay & Patterson to F. P. Salas, for said vessel, on the 11th of January, 1862, without any consideration being named or being proved to have been paid. Salas hired part of the crew in Charleston, and went himself, as supercargo, in the vessel. All on board of the vessel knew that Charleston and the southern ports were blockaded; and she evaded the blockade of that port in going out, bound on a voyage to the West Indies, with a cargo, from Charleston. Her crew list was certified at Charleston, January 20, 1862, and it was therein stated that the vessel was bound "from the port of Charleston to one or more ports in the West Indies, and back to a port of discharge in the Confederate States," which, as explained in the proofs *in preparatorio*, meant "anywhere we could get in, at St. John's, Fernandina, or St. Andrews." She sailed under the confederate flag, with a cargo, from Charleston, converted its proceeds into another cargo at Matanzas, and was destined, on her return, for any point or place in the southern States, wherever she could get in. The vessel was built and owned in Charleston, until the sale to Salas in that place, where the bill of sale was executed to him. It is not proved that he had any other residence, nor are papers or proofs put in showing that the cargo was not owned where it was shipped.

Upon these facts the vessel and cargo were, at the time and place of arrest, owned, in my judgment, by persons domiciled and carrying on trade and commerce in Charleston, and were thus enemy property,

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The Labuan.

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and lawful prize; or, if that cause of seizure might admit of doubt, it is clear, upon the evidence, that the whole voyage from Charleston to the West Indies, and back to a confederate port of the United States, was intentionally planned and put in prosecution to evade the blockade of Charleston; that such blockade was in fact evaded; and that an attempt was made, by the vessel and cargo, to violate the blockade of the coast of Florida.

When the capturing vessel approached the prize, the master and supercargo threw overboard from the vessel a bundle of papers, tied up in a canvas bag. They were taken from the cabin, with two stones fastened to the bundle to sink them, and were thus thrown overboard.

Judgment of condemnation and forfeiture of vessel and cargo is rendered.

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THE STEAMER LABUAN AND CARGO.

Vessel and cargo restored. The question of costs and damages reserved.

(Before BETTS, J., May, 1862.)

BETTS, J.: In this case a decree for the restitution of the vessel and cargo is rendered. The question of costs and damages against the libellants is reserved for after consideration, whenever the same is regularly called to the attention of the court, at the instance of either party interested therein.

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THE SHIP CHESHIRE AND CARGO.

After a decision condemning the vessel and cargo, but before the entry of the decree, the libellants moved for an immediate sale of vessel and cargo, as being in a perishing condition. The court held, on the facts, that no necessity was shown for such sale.

(Before BETTS, J., May 17, 1862.)

BETTS, J.: This suit was brought to hearing on the preliminary evidence of the ship's papers and the proofs, *in preparatorio*, on the 10th of March last, and was, after two days' discussion, submitted to the court for decision, with the reservation of a privilege to the counsel to file additional briefs during that week. Although the briefs were frequently asked for by the court, circumstances delayed their being furnished until about the 1st of May. In the mean time, the case had been so far considered by the court that it was enabled, immediately after reviewing the written briefs, (about the 5th or 6th of May,) to conclude

the examination of the papers, and an interlocutory decision was rendered, condemning the vessel and cargo to forfeiture as lawful prize. The papers were, with the decision, immediately placed in the hands of the clerk, with a view to the preparation of the formal decree to be entered on the minutes of the court, but such registry, it appears, has not been made, nor has the decree been notified to the claimants.

The district attorney, in behalf of the libellants, on the official report of the prize commissioners, accompanied by the sworn appraisement and statements of Cyrus Curtiss and E. B. Seaman, and the deposition of Walter S. Gove, who has had the custody of the vessel and the storage of the cargo a principal part of the time since their arrival as prize in this port, moves the court for an order for the immediate sale of the vessel and cargo, as being both of them in a perishable and perishing condition. Mr. Edwards, on the part of the claimants in the suit, opposes the application, and reads the affidavits of Robert Mackie, Charles H. Marshall and Washington Durbrow, to prove that the vessel is not perishing, or in a perishable condition, and that the cargo is not perishing, or in a suffering condition, or liable to deterioration, in the situation in which it is now placed.

The testimony of the claimants' witnesses rests upon a more specific and distinct notice of the facts relating to the state and exposure of the property than is furnished by the affidavits filed on the part of the United States, and relieves the case from all apparent necessity for an immediate sale of the property, by an extraordinary interposition of the court, and without waiting the ordinary course of procedure in the cause. The libellants, holding a decree in the suit, in effect final, since its rendition, possessed the power to compel a sale of the prize at once, upon execution, and do not require the protection of any further order to guard their interests in the recovery. No legal reason is shown for seeking an additional interlocutory order, in place of using the final decree of the court for effectuating the same end within the same period of time. It is suggested by the district attorney, and in effect admitted by the counsel for the claimants, that an appeal will be taken in the suit, immediately on the entry of the final decree, which may lead to delaying final execution on the decree of this court. But the court will not intercept the free use to either party of all appropriate remedies provided by law, where no evidence is given that such election must be attended with palpable loss or damage to the other party, and that a restraint in that respect is necessary to the prosecution of rights involved in the subject of litigation. If property is shown to be in a

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The Major Barbour.

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state of absolute wastage, or in such predicament that the shortest delay in disposing of it would reasonably lead to imminent peril of its loss or large deterioration, the court will undoubtedly interpose the aid of a summary sale, to avoid the destruction of the property condemned; but, without the pressure of such urgency, the regular course of proceedings will be left to govern the remedy in prize suits, the same as in other civil causes in admiralty.

As I do not regard the preponderance of evidence filed in the cause as showing a reasonable necessity for an instant sale of the property, the application for a summary order to that end is denied, and the libellants are left to enforce the decree by regular writ of execution.

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THE SCHOONER MAJOR BARBOUR AND CARGO.

A clear necessity will justify an entrance into a blockaded port, but satisfactory evidence will be required of the reality and urgency of the necessity.

Vessel and cargo condemned as enemy property, and for an attempt to violate the blockade.

(Before BETTS, J., May 28, 1862.)

BETTS, J.: The libel of information avers that the vessel and cargo were captured as lawful prize, January 28, 1862, at the mouth of the Grand Caillou bayou, on the coast of Louisiana, by the United States steamship *De Soto*. The prize was sent in charge of a prize-master and crew to this port, and was delivered to the prize commissioners here, February 21, 1862.

The firm of Prooss & Oliveros intervene and answer the libel, and claim portions of the cargo, as subjects of the Queen of Spain, and residents of Havana, in Cuba. No other claim is filed. No regular bill of sale, or registry, or other original document, verifying the title or true ownership of the vessel, was produced from the vessel, or on the trial. The only papers relating thereto, found on board of her at the time of the capture, were a certificate of the British consul at New Orleans, dated June 6, 1861, stating that the vessel was built in New Jersey, in the United States, and registered at the port of New Orleans, September 20, 1856; that J. Roberts is her master, and that John Brunass, of the city of New Orleans, has purchased all the shares in the vessel. That certificate was indorsed at Havana, by the British consul, June 26, 1861. Its effect is continued, by a subsequent indorsement, to December 6, 1861, and is again continued, by an indorsement made under the previous one, by the British consul at Havana, until March 6, 1862, by which time, as it states, "the vessel

must proceed to a British port, to be registered." This last entry was dated January 17, 1862, and was made about a week previous to the seizure of the vessel.

The only further documentary evidence found on the schooner, respecting her nationality or individual proprietorship, consists of two "agreements for foreign-going ships," or shipping articles, in the names of the master and crew of the vessel, on the outward and return voyage in question. The first one is a printed form, filled up, in manuscript, with the names of the master and crew, the date of its execution, and a description of the intended voyage. It purports to have been executed at New Orleans, December 3, 1861, by James Roberts, captain, two mates, five seamen, a cook and a steward, and to be for "a voyage from New Orleans to Havana, and any other port or ports where freight or a cargo may offer, at the discretion of the master, and back to a final port of discharge in one of the British colonies, for a time not to exceed six calendar months." The other agreement is drawn up in manuscript, and is substantially of the tenor of the printed one, containing the same complement of men, but with a change of four names. It purports to have been executed at Havana, January 10, 1862, and is for a voyage from that "port to Matamoras, and from thence to a port of discharge in the West Indies." The capture of the vessel and cargo took place in the vicinity of the mouth of the Mississippi, eighteen days thereafter.

An account of the voyage was given on the preparatory examination, February 27 and 28, by the master and mate of the vessel, one seaman, and two passengers. They were present at the capture. The master and seaman have resided in New Orleans twelve or thirteen years, and are British subjects. The mate is unmarried, is a native of the State of New York, and has no particular residence. The two passengers are Spanish subjects. One, Morey, has resided eleven years in New Orleans, and is married; the other, Prats, is a single man, who lives in Havana.

One of the passengers, Prats, for himself and firm, claims a portion of the cargo. No claimants have intervened for the residue of the cargo. The other witnesses testify that they had no interest in the vessel or cargo. They concur in stating that the capture was made February 27, or 28, a short distance off the western coast of Louisiana; that the vessel belonged to John Bronassas, of New Orleans, who appointed the master; that she has been carrying all kinds of cargo generally between New Orleans and Havana; and that her last clear-

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The Major Barbour.

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ing port before her capture was Havana. The captain says that a Spanish house in Havana were the ship's agents there, and obtained the cargo, consisting of coffee, cigars, salt, cases of merchandise, and boxes of powder, and other boxes, barrels and bales, the contents of which he does not know ; that he does not know that they have any interest in the cargo ; and that he thinks that the owners of the cargo reside in Matamoras. The vessel, after leaving Havana, touched at no other port before her capture. She sailed under the British flag. The captain says that he knew of the blockade of the southern ports before he left New Orleans, but did not know that Grand Caillou, where he was trying to put in, was blockaded. No warning or notice of such blockade had been given to him. He says that he was going into Grand Caillou because he was in a leaking condition, in consequence of a heavy gale which had been raging for about forty-eight hours ; and that, for that reason, the vessel, before and at that time, was sailing wide of Matamoras, and was going into Caillou, which was the nearest port. (Int. 36.)

The mate says, (Int. 12,) that the vessel has always carried general cargoes, similar to her present one, and has generally delivered them at the same place, about twenty-five miles up the Caillou river ; that he knew and supposes the captain did, that Louisiana was at war with the United States, and that New Orleans was blockaded by United States vessels ; and that he did not know of the blockade of the mouth of the Caillou, where the vessel was attempting to enter, and had never been warned off or had notice of such blockade. He says (Int. 26) that the voyage was a round voyage, commenced at Caillou river on or about the 11th of December.

The statement by the mate, of the course run by the vessel on her voyage, varies materially from that asserted by the master, (Int. 36.) The captain says : " The course, at all times when the weather would permit, was directed for Matamoras. The reason I was going into Grand Caillou was, because I was in a leaking condition. The vessel was sailing wide of Matamoras, and we were going into Caillou for that reason. It was the nearest port." The answer of the mate to the same interrogatory is : " Her course was not, at all times when the weather would permit, and was not at the time of her capture, directed to Matamoras, where she was destined by the ship's papers. We were upwards of 300 miles from Matamoras. Her course was altered for Caillou river on the morning of the day we were captured, I suppose for the purpose of entering that river and making a landing. It

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may have been for the purpose of discharging cargo, or for some other reason; I cannot say."

The question, whether the vessel was off her due course when arrested because of stress of weather, or other necessity compelling or justifying it, or whether she made a deviation intentionally, and under circumstances importing culpability on her part, is of moment on the issue between the parties. The master and mate differ broadly in their testimony on the point, and they speak positively upon a personal knowledge of the facts. The seaman adopts essentially the representations given by the master of the occurrence set forth in answer to the 36th interrogatory, but qualifies the force of his statement most essentially, by adding: "I only answer this question on information and belief, having no personal knowledge of the matters inquired of." The log of Saturday, January 25th, Sunday, the 26th, and Monday, the 27th, notes the weather each day, to the hour of capture on the 27th, as being generally clear, the sails all drawing. It remarks on Saturday that the middle of the day was partly squally, with light rain showers and baffling wind, and the latter part fresh breezes, but set the squaresail; on Sunday, that the squaresail and topsail were taken in—not certain of position of ship; sounded in 18 fathoms, and jibed ship—strong breezes; that Monday came in clear, and at 3.30 struck on shoal of Bay Caillou, and at 3.51 was boarded by United States ship-of-war, and taken in charge. Her log was kept in an exceedingly loose and unseamanlike manner. These facts, however, appear distinctly enough upon it—that the vessel left on this voyage, and commenced keeping sea time at 2 p. m. on Saturday, the 18th of January, 1862, though it omits entering her port of destination or departure. The latter, it is to be implied, was Havana, because the preceding entry ends with the arrival of the vessel there, December 23, 1861. On Monday, Tuesday, Wednesday, and Thursday the vessel encountered heavy weather, amounting, on Thursday, to what was noted as a gale. She was hove to, and furled her sails, and made some water. No mention is made of her touching ground, or becoming leaky, during that period.

The two passengers give no clear information as to the condition of the vessel or her navigation. They both of them avow their ignorance of the coast and of nautical matters, and their alarm in the storm, and anxiety that the master should put back or make a harbor. But it is evident, from the log and the testimony of the mate, that the storm or leaking of the ship in no way compelled him to seek shelter in Caillou

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bay. The gale had ceased, and moderate weather had prevailed for more than two days prior to her attempt to do so ; and the antecedents of the vessel and the character of her lading supply strong suspicions against the integrity of her movements. There is more weighing against them than the suspicions ordinarily recognized in prize courts, as violent presumptions affecting the innocence of a bottom unquestionably neutral in its character, which claims to be excused for seeking a blockaded port for necessary repairs, supplies, or shelter. An act done clearly from necessity, and fairly and with good faith, in entering a blockaded port, will be excused ; but such allegations are regarded with distrust, and satisfactory evidence is demanded of the reality and urgency of the necessity, (The Arthur, Edw., 202 ; The Fortuna, 5 Ch. Rob., 27 ; The Christiansberg, 6 Ch. Rob., 376 ) In this case, the evidence shows that the attempt to enter the blockaded port was not compelled by any suffering or peril of the vessel or cargo. It was made in calm weather, two days after the cessation of any dangerous wind, or any evidence, from the pumps of the vessel, or otherwise, that she had sustained any positive injury in the gale ; and the peril seems to have been unnoticed and unknown by the mate and seaman, or any one else having the management of the vessel. The alarms of the two passengers rested upon no facts, and were founded on their ignorance and timidity alone ; and the testimony of the master, as to the state of the vessel, and the cause of her proximity to the blockaded coast, affords no satisfactory justification for her efforts to that harbor.

Extrinsic facts and circumstances aggravate the suspicions as to the integrity of the doings and statements of the master. The latitude of Havana, noted at the foot of the log, was, by observation,  $23^{\circ} 58'$  north, and the longitude about  $84^{\circ} 40'$  west, which corresponds substantially with the ordinary maps and geographical descriptions. The mouth of the Rio Grande, and alleged port of destination, is laid down in the charts at about latitude  $26^{\circ}$  north, and longitude  $98^{\circ}$  west. The vessel was arrested on the Louisiana coast, a few miles from the Mississippi, which, from the last previous entry on the log, would probably be about latitude  $29^{\circ}$  north, and longitude  $89^{\circ} 58'$  west. The daily distances run are not given in the log, and the courses are stated obscurely and imperfectly. The port of departure, Havana, and the alleged port of destination, Matamoras, approximate to nearly the same parallel of latitude, and are separated by several degrees of longitude, and, by the entries in the log, the vessel was captured about nine days out, several



degrees north of her declared destination. No adequate cause is proved for such deviation. It is not attempted now to fix, with mathematical exactness, the position of the points mentioned, because, without such minuteness of correspondence, the bearing of the facts is sufficiently indicated by showing that the vessel was actually running on a line terminating more than 300 miles from her destination, her course being about the same length as the distance between Havana and Matamoras, with no cause assigned therefor on the log, or by the testimony of the master, or of any of the ship's company. Nor is any reason intimated, in the proofs, for navigating several hundreds of miles contiguous to the low and dangerous shores of Louisiana and Texas to reach a port lying southerly of those States, and directly in front of Havana, and open to the sea. The master and mate state in their testimony that the vessel was steering a course wide of Matamoras when she was captured, and before she discovered the capturing vessel. Looking at the prominent facts in proof—that the vessel was owned by a New Orleans merchant, and commanded by an enemy master; that she had been during the blockade engaged in other voyages from and to New Orleans; that she had evaded the blockade in leaving and entering that port under the same master and owner; that she had also before entered and sailed from Caillou bay; that she was attempting, in this instance, to take in a cargo chiefly, if not wholly, the produce of the outward one, and adapted to the urgent necessities of the enemy; that the purpose was manifested in the preparation and conduct of the voyage of running the blockade at that place with full knowledge of its existence and efficiency; and, moreover, that no satisfactory evidence is produced, or is found in the preparatory examination, or the ship's papers, that a necessity existed for the vessel to make a port to obtain repairs or relief, being in distress, or that she deviated from the general course pursued by her during the voyage until the same morning, and immediately before her arrest—I am satisfied, first, that the vessel and all the cargo not included within the claim of the claimants are enemy property; and second, that the vessel and her entire cargo are guilty of knowingly attempting to violate the blockade alleged in the suit; and that, for these causes, the vessel and cargo are lawful prize of war, and must be condemned to be forfeited.

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The Zavalla.

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## THE SCHOONER ZAVALLA AND CARGO.

The vessel was destroyed by her captors because unfit to be sent in for adjudication. The cargo was sent in: *Held* that the court had judicial cognizance of the capture of the vessel without having her within its territorial jurisdiction.

The crew of the vessel were, at their request, put on shore by the captors, and no person on board of her at her capture was sent in for examination. On special leave of the court witnesses from the capturing vessel were examined.

The rule that the testimony for the condemnation of the prize must be obtained directly from documents or witnesses found on board of her at the time of her seizure is always adhered to, unless satisfactory reasons are shown for its non-observance.

The court, during the present war, always regards, by force of the standing prize rules, a decree by default, regularly obtained, as equivalent to an admission on the record of the offence charged in the libel.

Spoilation of papers not explained by satisfactory proof.

Vessel and cargo condemned as enemy property, and for a violation of the blockade.

(Before BETTS, J., May 30, 1862.)

BETTS, J.: This vessel and cargo were captured, September 30, 1861, by the United States steamer Huntsville, in Atchafalaya bay, an outlet of Berwick bay, Louisiana. The vessel, valued at \$1,000, being adjudged by the United States naval officer in command at the capture, unfit to be sent to a northern port for adjudication, was destroyed by his orders, and the cargo was transmitted to this port, and here arrested by due process of law in this suit. None of the crew of the prize were produced for examination *in preparatorio* at this port. They were landed on the coast at their request by the captors, and immediately departed from the custody of the captors. On motion of the United States attorney, an order was granted by the court to take the examination of witnesses present at the capture, and who were produced from the capturing vessel.

The supposed specialties in the proceedings in this case are, that the vessel prosecuted as prize was not brought into port, nor were any individuals of her crew produced to be examined as witnesses.

This court has judicial cognizance of the capture, without at the time having the prize within its territorial jurisdiction, and without its being brought there during the pendency of the suit. (*Jecker v. Montgomery*, 13 How., 498, and 18 Id., 110.) Accordingly, no more irregularity or imperfection exists in acting upon the appropriation of the prize by the government, either in destroying it or converting it directly to public use, than if it had been placed bodily under the jurisdiction of the court by process issued against it.

The other informality suggested, of not having testimony for the condemnation of the prize, obtained directly from documents or witnesses

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found on board of the vessel at the time of her seizure, is a departure from a rule of practice which the prize court always expects will be honestly adhered to, unless satisfactory reasons are shown for its non-observance. (*The Anna*, 5 Ch., Rob., 373.) It is clear that the rule cannot be absolute and peremptory. The crew of the prize may all of them be killed, or escape in the act of capture, or the ship's papers may be destroyed or effectually concealed, in a flagrant attempt to violate a blockade by force, or to commit some other offence subjecting the prize to forfeiture by the law of nations. In like instances the court would be governed by the palpable merits of the case, and not sacrifice clear right to formalities of practice. (In the matter of proceeds of prizes of war, 1 Abbott's Adm. R., 495.)

The court, during the present war, always regards, by force of the standing prize rules, a decree by default, regularly obtained, as equivalent to an admission, on the record, of the offence charged in the libel.

The vessel here was apprehended in the effort to evade a blockade, the existence of which the master knew, as he admitted to the witness, and which he had before violated. The papers found on the vessel show that the vessel and cargo belong to an enemy port; and the master was seen to tear up and throw overboard papers as the capturing vessel approached the prize to seize her. No appearance has been made in the case, nor has any claim been filed against the libel, and the marshal returns to the monition that the prize has been attached, and that due notice has been given to all persons claiming the same. The facts of the destruction or spoliation of papers on board, not explained by satisfactory proof, and also the enemy property of the prize, supply legal causes for its condemnation and forfeiture. (*Jecker v. Montgomery*, 18 How., 110; *Wheat. on Captures*, 101; *The Pizarro*, 2 Wheat., 227; *The Adriana*, 1 Ch. Rob., 313; *The Two Brothers*, Id., 131.)

Judgment ordered, condemning the vessel and cargo as enemy property, and also for a violation of the blockade of the port from which the vessel was attempting to escape.

## THE BARK EMPRESS AND CARGO.

Formerly the act of sailing for a blockaded port, with knowledge of the blockade, was itself evidence of an attempt to evade the blockade; but now the law is that some overt act, denoting the forbidden attempt, must be shown in addition to the intention.

Sailing purposely for a blockaded port, with the intention properly notified on the ship's papers or otherwise fairly disclosed, may be excused in a neutral vessel if the object is honestly to inquire elsewhere whether the blockade still continues, and, if so, to avoid the blockaded port and complete the voyage at a lawful one.

The inquiry cannot lawfully be made at the blockaded port if it can be made elsewhere.

Under the President's proclamation of April 19, 1861, establishing a blockade pursuant to "the law of nations," a neutral vessel knowing a port to be under blockade, and sailing towards it with intent to evade such blockade, is subject to capture without being warned off by the blockading vessels.

In this case the vessel, with knowledge of the blockade and of its continuance, entered within the line of the blockading vessels with intent to pursue her voyage towards the blockaded port until she should be warned off.

Vessel and cargo condemned.

(Before BETTS, J., June 10, 1862.)

BETTS, J.: This vessel and cargo were captured on the 7th of November, 1861, off the mouth of the Mississippi river, in the Gulf of Mexico, by the United States ship-of-war Vincennes, and were sent to the port of New York for adjudication as prize. The libel was filed on the 22d of January, 1862, charging, in general allegations, that the vessel and cargo were lawful prize. Claims were thereafter interposed by separate claimants of the vessel and cargo, all claiming to be neutrals, some British and some Spanish subjects. These claims were accompanied by minute and elaborate averments of various matters wholly irrelevant to the issue of the prize or no prize, and which are altogether irregular, either as pleadings or otherwise, in a prize proceeding. By a decision of the court, on a preliminary motion to strike out all these averments, it was ordered that everything be stricken from the claims except the ordinary averments of ownership, and any special circumstance as to such ownership, if any such existed, and a general denial of the validity of the capture; all else being irrelevant and irregular.

There is no material contrariety in the proofs which develop the facts in the cause, and the arguments of counsel have proceeded upon a common construction of the evidence.

The papers of the vessel show that she is of British build, and was employed by her owners on a voyage to Rio Janeiro, and was at that port chartered by the master to affreighters, partly British and partly Brazilian subjects, for the transportation of a cargo of coffee "to New

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Orleans or Mobile, as may be ordered by the charterers; and if the vessel, on arrival, be warned off by a blockading squadron, to proceed either to New York, Baltimore, or Philadelphia, which second port of destination is likewise to be named by the charterers previous to the departure of the vessel from Rio de Janeiro." This charter was executed in Rio on the 5th of September, 1861, between Joseph Hopkinson, the master of the vessel, and William Moore & Co., of Rio, it being then and there known to the parties and publicly notorious that New Orleans and Mobile were under a blockade established by the United States government.

On the 14th of September instructions were given to the master to proceed to New Orleans with his cargo, and, if the port should be open, to deliver the same to the indorsement of the bill of lading made by the charterers; it being added, "Should the port be blockaded, you will be warned off, and will then proceed direct to your discharge port of New York, where indorsed bill of lading also awaits for such contingency."

The vessel sailed from Rio de Janeiro on the 18th of September. A few days after leaving that port the ship spoke a vessel, and received from her the information that all the southern ports continued to be blockaded. Subsequently, and about nine miles off Cape Antonio, which is the westernmost point of the island of Cuba, the ship spoke another vessel from New York, from which the same information was received, together with the latest newspapers. This was but nine or ten days before the capture. The ship pursued her course direct from Rio towards New Orleans, without deviation to any port to make inquiries whether the blockade of New Orleans continued, and on the 26th of November, 1861, struck upon a bar within the mouth of the Mississippi river, and inside of the blockading squadron, in the night-time, and was captured by boats sent from one of the blockading vessels on the following morning.

It is contended by the captors that the vessel and cargo should be condemned as lawful prize :

1. Because she left the port of Rio de Janeiro with full knowledge by the master and all parties interested that the port of New Orleans was blockaded, on a voyage direct for that port, without intending to inquire, and without inquiring, at any intermediate point or place, as to the continued existence of said blockade.

2. Because the vessel left the port of Rio de Janeiro upon a voyage to the blockaded port of New Orleans knowing the same to be

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blockaded, with the unlawful intent to enter said port and deliver her cargo there, in violation of said blockade, if an opportunity to do so should occur, and without intending to make any inquiry anywhere as to the continuance of the blockade.

3. Because the vessel, with knowledge of the blockade of the port of New Orleans before the commencement of the voyage, confirmed by information and warning twice received upon the voyage, and once only nine days before the capture, pursued her course with the fraudulent intent to violate said blockade, and actually made the attempt in the night-time, and so far succeeded as to get inside the blockading vessels, where she was captured.

The claimants controvert these several propositions, and insist that as matter of fact the honest intent was to make inquiry at the blockaded port, without previously attempting to enter, and that as matter of law they had a right to do so, and especially because of the clause in the President's proclamation of April 19, 1861, declaring that, "if with a view to violate such blockade a vessel shall approach or shall attempt to leave any of the said ports, she shall be duly warned off by the commander of one of the blockading vessels, who will indorse on her register the fact and date of such warning, and if the same vessel shall again attempt to enter or leave the blockaded port she will be captured," by reason of which they were, as they claim, entitled to enter the blockaded port, unless warned off.

This document or proclamation has been pressed by the counsel for all the claimants as a controlling point against the right of capture, and the various particulars gathered from the proofs have been scrutinized minutely on both sides, with eminent ability and learning, in the effort to deduce from the facts evidence tending to show the guilt or the innocence of the transaction.

Before expressing the views of the court upon the effect of the evidence it is proper to dispose of the legal points raised in the case.

First. Was it lawful for the vessel, knowing of the blockade of the port of New Orleans prior to the commencement of the voyage, and with that information repeatedly confirmed upon the voyage, to proceed direct to the mouth of the blockaded port, under pretence of inquiry or with the actual intent to inquire there, as to the continued existence of the blockade?

The earlier decisions of the prize courts indicated that the act of sailing for a blockaded port, with knowledge of the blockade, was itself evidence of an attempt to evade the blockade; but the state of

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the law upon that point now is that some overt act denoting the forbidden attempt must be shown, in addition to an intention to commit such infraction, however strongly the latter may have been indicated and persisted in. (1 Phillips on Ins., 459, art. 832, and cases cited; The Columbia, 1 Caine's Ca., 7; Fitzsimmons v. Newport Ins. Co., 4 Cranch, 198, 200; 1 Kent's Comm., 148, 150.) The rule is also so far mitigated in its application that sailing purposely for a blockaded port, with the intention properly notified on the ship's papers, or otherwise fairly disclosed, may be excused in a neutral ship, if the object is honestly to inquire elsewhere whether the blockade is still in continuance; and if so, to avoid the blockaded port, and complete the voyage at a lawful one. The hazard of allowing such privilege, and the necessity of observing the utmost ingenuousness in its indulgence, are emphatically noted in the authorities; and accordingly the courts take heed, in administering it, that the neutral be not permitted, under cover of that relaxation of prize law, to smother the principle by placing himself out of reach of its restraints. An adherence to the old rule would therefore seem to be still exacted in its full simplicity in one of its cardinal features, which is, that the neutral vessel shall make her inquiries so plainly clear of the blockaded port that she shall not acquire the ability (as Chancellor Kent phrases the act) *to slip herself into it*. Phillimore states the general result of the authorities to be "that it has never, under any circumstances, been held legal that the inquiry shall be made at the mouth of the river or estuary" of the blockaded port. (3 Phill. Int. Law, 398, sec. 304.)

Dr. Lushington says, in the case of *The Union*, (1 Spinks's Pr. Ca., 164:) "The claimants allege the vessel was chartered for Riga, and, being uncertain whether the place was blockaded or not, they sent her to Riga to inquire of the blockading force whether Riga was blockaded." The court inquires, "Is this justifiable?" and remarks, in reply, under particular circumstances, perhaps it may be justifiable, where information cannot be otherwise procured, to inquire of the blockading "squadron," and denies that the excuse can prevail if a neutral port was accessible, though an inquiry there might be attended with great loss and expense to the neutral ship.

It is clear, therefore, to the court that the claimants cannot lawfully, under claim of making inquiry whether a port known to have been under blockade when the voyage was set on foot, and after the vessel had been prosecuting it toward the port, is still under blockade, go

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forward to the entrance of the port and within the actual line of the blockading force; and that such act, according to the law of nations, subjects the vessel to condemnation as prize of war. The same doctrine was recognized and upheld by this court in its decisions in the cases of *The Delta* and *The Cheshire*, and must continue to be the law of the court until overruled by the appellate tribunals.

The second question is, whether, by the terms of the executive proclamation, a neutral vessel has a right to undertake and pursue a voyage direct to a blockaded port, knowing it to be blockaded, and to enter the port itself, without liability to capture, unless she be previously warned off by a commander of one of the blockading vessels, and the warning be indorsed on the vessel's register.

The paramount fact announced by the executive proclamation of April 19, 1861, is the establishment of the blockade pursuant to the laws of the United States and *the law of nations*. Now, the law of nations is explicit and indubitable that a neutral vessel, knowing a port to be in a state of blockade, and sailing towards it with intent to evade such blockade, commits a fraud upon the belligerent rights of the blockading power, and is subject to forfeiture therefor. (3 Phillimore's Int. Law, 397; Wheat. Int. Law, 541, 550; 1 Kent's Comm., 148, 149; 1 Duer on Ins., 663, 669; Fland. Mar. Law, 168, § 225, note 3; 2 Arnould on Ins., 747.) It was obviously with this understanding of the character of the blockade proclaimed that the commodore of the Atlantic naval squadron, whose duty it was to direct the naval force in obedience to the executive mandate, in announcing, on the 30th of April, 1861, the effectiveness of the blockade, declares that vessels "passing the capes of Virginia, and *coming from a distance, in ignorance of the proclamation*, will be warned off," &c. This was precisely the belligerent blockade, under the law of nations. The United States have never insisted that a neutral vessel approaching a blockaded port was entitled to receive notice of the blockade, and to be warned off, unless she approached in ignorance of the blockade. (Treaty with England, 8 U. S. Stats. at Large, 125, art. 18; Treaty with France, Id., 184, art. 12.) And the Supreme Court regards these treaty compacts as the true exposition of the law of nations in regard to blockades. (*Fitzsimmons v. The Newport Ins. Co.*, 4 Cranch, 199.)

The warning and immunity from capture provided by the proclamation of April 19, 1861, must, therefore, be understood to refer to and embrace only those vessels which approach a port in ignorance of its being under blockade. (*The Columbia*, 1 Ch. Rob., 154.)



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The third question is one of fact: Did the vessel, knowing of the blockade of the port of New Orleans before the commencement of the voyage, and with that knowledge confirmed by information and warning twice received during the voyage, and once only nine days before the capture, persistently pursue her course direct to the mouth of the blockaded port with the fraudulent intent to violate the blockade, and did she, in fact, actually attempt to do so?

Neither the testimony of the witnesses taken *in preparatorio*, nor the papers found on board, furnish any evidence whatever which tends to show that any ground for a supposition, or any supposition, in fact, existed, that the blockade had been or might have been discontinued. On the contrary, all the evidence before the master tended to confirm the notice and knowledge under which his voyage was begun, that the port remained invested. The evidence of the dishonest intent of the vessel in her approach to the passes of the Mississippi is clearly deducible from a great number of circumstances established by the testimony.

It is not designed, nor is it necessary, to enter here upon a review in detail of this evidence. Suffice it to say, that it leaves no doubt whatever upon the mind of the court that the vessel was to go into New Orleans as her real port of destination, and that she continued, till her arrest, to be navigated with that purpose, unless she should be prevented by a warning given to her by the blockading squadron. Every step taken by her on the voyage was an attempt to fulfil that purpose. She avoided calling at Cuba, a neutral island, nearly on the line of her course from Rio to New Orleans, to seek the information she pretended to want. She omitted to lie to off the port to await an opportunity to speak a blockading vessel. She ran directly in for the port in the darkness of the night without making signals or manifesting any expectation of attracting the attention of vessels at all aside of her course of entrance. Had she been honestly in search of information of the state of the markets, or of that of the tide, then it would be unreasonable to suppose she would have run blindly in to the shore without taking active measures to be assured of like particulars needful to be known by her, unless she was governed by a desire to keep her movements concealed.

The court can put no other interpretation upon her proceedings than that she meant that the course she was pursuing should take her into the port of New Orleans. This may have been under a mistake of law, in the idea that she might do so excusably if the United States

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failed to intercept the attempt and turn her away. A misapprehension of the law in that respect can be of no avail to her whilst acting under a clear understanding of the facts.

Upon these several grounds a decree of condemnation is ordered of both vessel and cargo.\*

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THE SCHOONER J. W. WILDER AND CARGO.

Vessel and cargo condemned for an attempt to violate the blockade.

(Before BETTS, J., June, 1862.)

BETTS, J.: The schooner J. W. Wilder and her cargo were captured by the United States steamer R. R. Cuyler, January 20, 1862, off Mobile Point, as prize of war. The vessel was appraised, under orders of the flag-officer in command of that station, and appropriated to the use of the government, at \$3,250, and the cargo was remitted to the port of New York, and was here libelled for condemnation as prize, March 27, 1862. The monition and attachment issued thereon were returned by the marshal, April 15, 1862. An appearance being interposed for the vessel and cargo, but no answer being given in, the United States attorney took an order of condemnation of the prize by default, and, on the 10th of June thereafter, moved the court, upon the pleadings, the process, its return, and the proofs, for a final decree of condemnation.

Evidence being given to the court by the United States attorney that the master and crew ran the vessel ashore at the time of capture and immediately abandoned her, and that no person who was on the vessel at the time of her capture could be produced as a witness before the prize commissioners, the court, on the application of the United States attorney, ordered that Henry K. Lapham, the prize master, and an acting master in the United States navy, who was present at the capture, be received and examined as a witness on the interrogatories *in preparatorio*.

The witness states that the vessel when arrested was off Mobile, and appeared to be attempting to enter that port, which was under strict blockade; that when the capturing vessel approached the prize she attempted to escape, and the crew abandoned her to avoid being seized; that they repaired to the shore and fired from sand-hills on

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\* This decree was reversed by the circuit court, on appeal, July 17, 1863. The libellants have appealed to the Supreme Court, as regards the vessel, but not in respect to the cargo.

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shore upon the men pursuing their vessel; that when the captors were endeavoring to tow off the prize, her crew, being re-enforced from a fort on shore, again attacked the captors, and wounded several of them by shots; and that the prize had made the attempt to enter Mobile harbor.

Among the documents produced from the vessel are four paper volumes purporting to give accounts of voyages which are supposed to be those of the same vessel, but none of them amount to full or regular logs of her voyages or employment, or identify her as the vessel now arrested. The last volume has several, apparently four or five, leaves of foolscap paper torn out from the front of its binding, and commences thus: "Schooner Anoseta, from Havana towards Matamoros, Francisco Capella, master." Under the first page of the log is written, "January 15, 1862," and under the second page, "January 16, 1862." Under the first page this remark is entered: "At 5 p. m. got under way and proceeded to sea." At the end of the day the vessel's position is noted as latitude  $23^{\circ} 37'$  north, and longitude  $84^{\circ}$  west, by observation. The entries are continued to the end of the 17th, at latitude  $26^{\circ} 12'$  north, longitude  $85^{\circ} 45'$  west, by observation, when all mention of the vessel in the log closes. The witness examined deposes that the vessel was captured January 20, about twelve miles to the eastward of Mobile Point, in the Gulf of Mexico, in latitude  $30^{\circ} 40'$  north. The strait east of Dauphin island is taken by vessels drawing over eight feet, in order to reach Mobile.

A letter, dated December 3, was found on board the vessel when captured, addressed inside to Captain Capella, and on the outside to "Captain de la Wilder, Mobile," written in Spanish, and signed "Perez," advising him of a passenger to go the voyage, and that the vessel might depart as soon as he was on board, and that he was to go without charge for passage. The letter says: "I add further, for Carbonell Murrell says, if you stand in by the East Pass, that he has given orders that they aid him in everything."

There was also a telegraph note found among the papers on board, as follows: "Telegraph from Mobile, December 2, 1861. To Captain Capella, schooner Wilder, Fort Morgan. Perez says not to get uneasy, only wait one (1) or two (2) days. B. BAZAR."

Two bills of lading were also on board the schooner, one dated Havana, January 14, 1862, for two barrels of washing soda, shipped by Carbonell on the schooner called the Anoseta, Capella, master, for Matamoros, consigned to Capella; the other dated January 9, at Ha-

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*The Flash.*

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vana, written in Spanish, of a quantity of cigars shipped by Rafael Perez on board the schooner J. W. Wilder, Captain Capella, for Mobile, for the order and risk of Srs. Bazar & Bro., de Mobile.

There were other unimportant papers found on the vessel relating to the brig Venus and the H. W. Stewart, and also blank manifests, but no documents respecting the title to or destination of the captured vessel.

It is manifest, from the foregoing evidence, that the vessel was destined to the port of Mobile, and, when arrested, was making the attempt to enter that port. There is no evidence that she was a neutral vessel, and the proof is clear that the lading of cigars was enemy property, being shipped at the risk of enemy owners in Mobile.

The papers are also false and delusive in two particulars: first, in the pretence on the log-book that her voyage was towards Matamoras, when, in truth, her course was hundreds of miles wide of that route; and, secondly, that she was named and navigated as the Anoseta, which is falsified by the bill of lading of Perez, and the letters found on board addressed to the master previous to and at the time of her sailing.

The vessel and cargo are, accordingly, adjudged to be forfeited to the libellants.

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THE SCHOONER FLASH AND CARGO.

Vessel and cargo condemned for an attempt to violate the blockade.

(Before BETTS, J., June, 1862.)

BETTS, J.: This schooner and cargo were seized, May 2, 1862, near the coast of South Carolina, off Caper's island, about fourteen miles northerly from Charleston, by the United States bark Restless, and were brought into this port May 12, thereafter, and libelled in this suit May 19. The attachment issued thereon was returned on the 10th of June thereafter, duly served, and no person appearing thereto, and proclamation having been made in open court, interlocutory judgment by default was rendered, according to the practice of the court.

On the evidence before the court it appears that the schooner was chased for five hours at sea by the capturing vessel, and ran into an inlet of the port of Charleston, and, not being able to escape, was run on shore, and set fire to, and abandoned by her own crew, who then all escaped on shore. The Flash was thereupon taken possession of

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The Flash.

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by the boats of the capturing ship, and made subject to these proceedings.

The vessel, as appears by her registry, found on board at her capture, was an American bottom in build, but was registered at Nassau, N. P., in the Bahamas, November 24, 1860, to Mordecai Bethel and Silvanus Bethel, British subjects. Subsequent registers were indorsed upon the registry, April 21, 1862, and Robert H. Sawyer and Ramos A. Menendez were recorded as owners, and John Smith was registered as master, April 19, 1862. The shipping agreement, also found on board, was by the master and crew, for a voyage from Nassau to New York, and back to Nassau, and was dated April 16, 1862, and was between John Smith, master, and the crew named.

The clearance of the vessel and cargo, the latter consisting of salt, soap, oil and paper, were made at the port of Nassau on the 19th of April last; and two bills of lading and one invoice of salt, and a letter of advice from the shippers to the consignee, were on board of the vessel at the time of her arrest. The documentary proofs thus found evince an honest voyage from a neutral port to one of our own ports, with a lawful cargo, in a legal trade.

Upon proof that none of the company of the captured vessel had been arrested on her seizure, or could be produced in court as witnesses in this suit, the court, on motion of the district attorney, ordered that the prize-master, Charles Smith, be examined as a witness in the cause, before the prize commissioners, *in preparatorio*. He says that he is a citizen of the United States, and was present at the capture of the schooner Flash and cargo; that she was, at the time, attempting to enter the port of Charleston, which was then under blockade; that, when first seen, she was heading off; that she then altered her course inward, and was evidently bound into the port; that she was fired at, and struck in the sails, and was then run on shore, set fire to, and abandoned by her crew in a small boat; and that they took with them all her papers, except her log-book.

Before the close of the proceedings, the master and mate and one seaman of the crew having been sent to this port on board of a United States vessel, were produced as witnesses by the district attorney, and were examined *in preparatorio* before the prize commissioners. The master and mate testify that the vessel was owned and laden at Nassau, by British subjects, and was destined for Charleston, if she could get into that port, otherwise to New York; that she had got inside of the blockading vessels before she was run ashore, and had

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The Olive.

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broken the blockade; and that the cargo was to be delivered at Charleston for the account of the shippers. The master of the vessel says that he knew, and that he supposes the owners also knew, of the blockade; and that when they left the vessel they took with them the log-book and all the ship's papers on board, which are now in the hands of the prize commissioners. The seaman Fry says that he supposed the voyage was to New York, according to the shipping agreement.

The evidence is thus made full and satisfactory, that the voyage was undertaken and prosecuted until the capture of the vessel, with the intention, on the part of the master and owners, to violate the blockade of Charleston, knowing it to be in force. Accordingly, the vessel and cargo are condemned as forfeited to the libellants.

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THE SCHOONER OLIVE AND CARGO.

Vessel and cargo condemned as enemy property.

(Before BERTS, J., June 20, 1862.)

BERTS, J.: The above vessel and cargo were captured by the United States ship-of-war New London, in November, 1862, in Mississippi sound, off Biloxi. The schooner was loaded with lumber, and was directing her course towards the Mississippi passes. It appears, from the papers found on board of her, that she was enrolled and licensed at the port of Pensacola under the authority of the Confederate States, as owned by residents of Florida, thus being enemy property. On her arrest, she was, under the directions of the United States naval officer in command, taken to Ship island, and the vessel and cargo were there appraised—the vessel at \$700, and the cargo of lumber, being 42,000 feet, at \$25 per thousand feet, and the vessel and cargo were, at that valuation, appropriated to the military use of the United States.

On the libel, filed May 19, 1862, in this court, and the return of service and notice of the attachment and monition issued therein, and on public proclamation on such return made, no appearance being entered for the vessel or the cargo, judgment by default is rendered on motion of the United States attorney, condemning the vessel and cargo to be forfeited, and that the sums so appraised as the value thereof be paid into the registry of the court in satisfaction of said decree and forfeiture.

## THE SHIP ALLIANCE AND CARGO.

Motion founded on the report of the prize commissioner for an order to sell the cargo, pending the hearing, denied, the proposed sale being earnestly opposed by the claimants, and there being a strong preponderance in the number of witnesses against the necessity of the sale, and the report not being founded on the personal inspection and judgment of the commissioner.

(Before BETTS, J., July, 1862.)

BETTS, J.: In this suit, application was made to the court, on written notice to the proctor for the claimants, and on the report of the prize commissioners recommending such order, for an interlocutory order directing a sale of the cargo above mentioned, or for such other or further order as to the court may seem just and proper. The motion was further supported by affidavits made by Edward W. Blackwell, a gauger of spirits of turpentine, John Camerden, a merchant and wholesale dealer in resin, turpentine, and other naval stores, and Benjamin Bateman, a broker in turpentine, resin, and other naval stores, who all testify that the condition of the cargo and the state of the market are such as to render an immediate sale of this property needful and proper. In reply to these representations, the claimants file affidavits of Charles W. Blossom, William H. Kerr, Call J. Turner, F. A. Blossom, James B. Barney, and John Van Alen, merchants, and others, of this port, conversant with this property, who dissent directly and pointedly from the opinion and statements in favor of the libellants, and assert that the property is not in a condition demanding an immediate sale, and that a sale at this period of the year will be prejudicial to the interests of all concerned in the cargo.

The vessel and cargo were brought into port on the 13th of May last, and no reason is assigned for not previously proceeding to trial and decision in the suit

Considering, therefore, that the proposed sale is opposed earnestly by the claimants of the property, and by a strong preponderance in the number of witnesses on the question of its necessity, and that there remains no cause, on the evidence, for extraordinary despatch in making such sale previous to the regular condemnation of the property, I shall decline granting the interlocutory decree called for.

The report of the commissioners, when founded upon their personal inspection and judgment in respect to the propriety of the measure, will generally be conclusive with the court. That I shall be inclined to regard as meant by the act to guide the discretion of the court. But when the decree asked for rests upon "other evidence" than the official finding of facts by the report itself, I must be governed by the evidence conflicting with it, when that has a reasonable preponderance.

Motion denied.

## THE SCHOONER MERSEY AND CARGO.

The rule of the English prize law is emphatic, that the absence of a bill of sale from the ship's papers, and the want of proof of payment of the purchase-money, in support of a claim by a neutral to an enemy vessel, are circumstances so strongly suspicious, and so vitally defective to a *bona fide* title to her, that the court, after condemnation of the vessel on the preparatory proofs, will not even allow further proof to be given in support of the title.

A transfer of property to a neutral by an enemy in time of war, or in aid of a contemplated war, is illegal, as in violation and fraud of vested belligerent rights.

The court will take judicial notice of the notorious course of trade between the neutral port of Nassau and the blockaded ports of the enemy.

Suspicious circumstances as to the destination of the vessel commented on.

The intentional mutilation of the log-book of the vessel is convincing evidence of an attempt by her to perpetrate a fraud, in violation of the law of nations, for which she and her cargo are subject to forfeiture.

It will always be inferred that the papers of a vessel which have been destroyed related to the vessel or cargo, and that it was of material consequence to some unlawful interests that they should be destroyed.

The spoliation of papers is not *per se* a ground for necessarily condemning a vessel, but it raises a strong presumption of fraudulent purposes in those having charge of her, which will effect her condemnation if not satisfactorily accounted for.

The particulars of the mutilation of the log-book in this case stated.

The log-book was mutilated with intent to mislead and deceive with regard to the purposes of the voyage, in fraud of the belligerent rights of the United States, and the culpability thus shown, coupled with other marks of disguised and dishonest practices, demands the condemnation of vessel and cargo.

Vessel and cargo condemned on the following grounds:

1. The vessel left the enemy's country as enemy property, and no attempted change of it to neutral property was made until her arrival in a neutral port. There is no evidence of a *bona fide* consideration paid for her purchase, or of a bill of sale executed, or of actual possession delivered to the alleged purchaser, or that he ever exercised acts of ownership over the vessel, or claimed to be her owner.
2. She had previously come out of an enemy port by evading the blockade, and was seized on her first voyage subsequent thereto.
3. Her ostensible voyage from a neutral port to a loyal port was simulated, and she was really bound to a blockaded port.

(Before BETTS, J., July 28, 1862.)

BETTS, J.: This vessel and cargo were captured on the 26th of April, 1862, in the Atlantic ocean, two days' sail from Nassau, N. P., by the United States steamer Santiago de Cuba, and were sent into this port for adjudication as prize of war.

A libel for their condemnation was filed on the 17th of May. On the 17th of June Joseph Roberts, a resident merchant of Nassau, New Providence, intervened and filed his claim and answer and test oath to the libel, averring and testifying that he is a subject of the Queen of Great Britain, and a resident of Nassau aforesaid, and owner of the said vessel and her tackle; that, when seized, the vessel was in the Gulf of Florida, about eighty or one hundred miles from land, and that she was laden with an honest cargo belonging to Sawyer & Men-



endez, of Nassau, and was on an honest voyage from Nassau to Baltimore.

Robert H. Sawyer and Ramon A. Menendez answer and claim that the cargo of the vessel belonged to them; that the voyage was a lawful one, and that the vessel was unlawfully seized. The test oath to the claim of Sawyer & Menendez is made by Montell, the consignee.

The papers found on the vessel were, first, a certificate of British registry at Nassau, N. P., Bahamas. This certificate bears date at Nassau the 15th of April, 1862; it states the vessel to be foreign built, and that her foreign name was Elizabeth; second, the shipping agreement signed between William H. Sweeting, master, a mate, four seamen, and a cook, dated April 21, 1862; third, a bill of lading and invoice of the cargo from the shippers, Sawyer & Menendez, dated Nassau, April 20, 1862, consigned to J. I. Montell, of Baltimore; fourth, a clearance at the port of Nassau of the same cargo for the port of Baltimore, April 21, 1862; fifth, a letter of advice from the shippers to the consignee of the consignment, dated April 22, 1862; sixth, the leaves of a portion of what appears upon its face to be a log-book of the voyage.

The examination of the master, the mate, and one seaman, is also put in evidence, the same having been taken *in preparatorio*.

Upon the pleadings and proofs the libellants contended—

*First.* That the vessel and cargo were subject to forfeiture, she having, on the voyage immediately preceding that of her capture, unlawfully run the blockade of the port of Charleston, existing at the time.

*Second.* That the voyage which was being performed, and which purported to be to Baltimore, and with an honest neutral lading, was simulated and untrue, the vessel and cargo on board being really enemy property and destined for the port of Charleston.

*Third.* That the log-book was mutilated on the voyage for fraudulent purposes; and that the evidence in the case, furnished by the witnesses and the documents, was intended for deception and fraud as to the facts of the voyage and its objects.

The claimants urged, on the contrary, that they were honest owners of the vessel and cargo, and that the whole adventure was truly represented in the answers and claims interposed.

The master testifies, in his examination *in preparatorio*, that he had no knowledge of the vessel until he saw her in Nassau, in March last, and that he was appointed her master by Sawyer & Menendez, who delivered possession of her to him as master. He states his belief

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The Mersey.

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that she was an American-built vessel, and that when she took out a British register in April her name was changed from the Elizabeth to the Mersey. He states that he heard that the schooner came to Nassau, with a cargo of cotton, from Charleston, on her last voyage; that he saw the cotton on board of her, and that she came to Nassau the last of March. He states that he had heard that while her name was the Elizabeth, she belonged to a man in Charleston by name Comall; that Roberts, the claimant of the vessel, resides at Nassau, where he has known him for four or five years; and that he knows of his ownership by the registry, and also heard that he was owner, but never heard anything about any sale. He states that he believes that the cargo belongs to Sawyer & Menendez, who have resided five or six years in Nassau; that the consignee, Montell, was formerly a resident of Nassau, but has resided in Baltimore for twenty-seven years; that he, the witness, has been acquainted with him from boyhood; that he does not believe that the consignee has any interest in the cargo; and that he knows nothing of any bill of sale of the vessel, or of any agreement about her, or of any charter-party. He further states that he knew that all the southern ports were under blockade; that he understood that the vessel came to Nassau from Charleston, and, therefore, supposes she ran the blockade there; that he knows no more of the history of the vessel than he has stated; and that no papers or writings on board of the vessel were altered or mutilated or suppressed on the voyage.

This brief synopsis of the evidence of the master plainly manifests that the vessel was not put in his charge by her registered owner, and that he went into her service with a clear understanding that she was not to be sailed to Baltimore in the interest of Roberts, or of Montell, the nominal consignee of the cargo. The letter of instructions which she carried to Montell from Sawyer & Menendez evinced that an ulterior voyage remained to be performed by the vessel, other than a return to Nassau, had she reached Baltimore, and that the master was the confidential agent to be consulted by the consignee, "both in selling and also in purchasing a return cargo." This language evidently denoted that the master was not a mere carrier of the cargo to Montell, and also that Roberts acted in no way in fitting out or directing the voyage, that being exclusively the act of the shippers of the cargo, who were corresponded with by the master as the actual owners of the vessel. In answer to the 14th interrogatory, the master says: "The cargo is owned by Sawyer & Menendez, I believe, because they

shipped it, and it is stated in the invoice that they were the shippers ;" but to the 28th interrogatory he says : " If the vessel had arrived at her destined port, I suppose the cargo would have belonged to S. T. Montell, the consignee. The shippers, I suppose, took the chances of the market." The two suppositions of this last answer are incompatible with each other, and one of them with the statement of the witness in reply to the 14th interrogatory.

No bill of sale or other conveyance of the vessel to Roberts was found with the papers on board, and no payment of a consideration on her transfer, nor any act of possession or ownership on his part, other than the registration of her in his name, was proved or asserted by Roberts. The testimony from the claimants is, that the master had been acquainted with Roberts four or five years in Nassau. The master offers no further evidence of the fact of sale than that he had seen the registry and had heard that Roberts was the owner; but, under these circumstances, the manner of proof leads to the implication that the hearsay of which the master testifies was from the shippers rather than from Roberts's own declaration or assertion of ownership, which Lord Stowell regarded as very feeble and equivocal evidence in proof of ownership. (The Two Brothers, 1 Ch. Rob., 131.) The rule of the English prize law is emphatic, that the absence of a bill of sale from the ship's papers, (it being the title-deed to the vessel,) and the want of proof of payment of the purchase money, in support of a claim by a neutral to an enemy vessel, are circumstances so strongly suspicious and vitally defective to a *bona fide* title to her that the court, after condemnation of the vessel on the preparatory proofs, will not even allow further proof to be given in support of the title. (The Christine, 1 Spinks' Prize Cases, 82.) For aught that appears before the court, this vessel retained the same character and ownership she bore when she left Charleston and entered the port of Nassau the last of March, and at the time the British registry on board of her was executed at Nassau; but, beyond that subsidiary principle is the higher doctrine, that a transfer of property to a neutral by an enemy in time of war, or in aid of a contemplated war, is illegal, as in violation and fraud of vested belligerent rights. (The Bernon, 1 Ch. Rob., 102; The Noydt Gedacht, 2 Id., 137, note; The Minerva, 6 Id., 396, 400, note; The Rosalie and Betty, 2 Id., 343.)

The cargo on board was documented as neutral, and by the papers was directed to a neutral port; and unless it was on carriage under false and fraudulent semblance, with intent to cover and disguise its

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The Mersey.

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character, and to convey it to an enemy port, or in some other way fraudulently evade the belligerent right of the United States, it must be restored to the claimants thereof.

The questions, then, specifically touching the suit for the condemnation of the cargo, rest upon the inquiry whether it is virtually shown to be enemy property, or to have been exported from Nassau with the view and purpose of evading the blockade and carrying it to the enemy, or whether any deception has been practiced in relation to its transportation, calculated and intended to mislead the government and disguise the true character of the voyage and violate the belligerent rights of the United States.

The intrinsic and extraneous circumstances insisted upon by the libellants as indicating a culpable intention in the vessel and voyage consist essentially in the imputation that it was matter of notoriety at Nassau, and personally known to all the vessel's company, that the southern ports were in a state of blockade, and that the court is judicially informed that the open and steady course of navigation and trade at the time of the fitting out of the vessel at Nassau was that of running cargoes in and out of Charleston in violation of the blockade of that port by neutral and enemy vessels notoriously and publicly employed in and prosecuting that object and pursuit; and that this vessel on her last voyage evaded the blockade of Charleston with an enemy cargo, and immediately on her arrival at Nassau assumed a neutral ownership, and was reladen with a cargo specially adapted to the wants of Charleston, and of the character of the cargoes constantly being shipped from Nassau to Charleston in violation of the blockade. Sir William Scott, in *The Rosalie and Betty*, (2 Ch. Rob., 344.) says that the judiciary is not to shut its eyes "to what is generally passing in the world—to that obvious system of covering the property of the enemy which, as the war advances, grows notoriously more artificial. Not to know these facts, as matters of frequent and not unfamiliar occurrence, would be not to know the general nature of the subject upon which the court is to decide; not to consider them at all, would not be to do justice."

The fact is proved that a large quantity of salt, particularly, was laden directly from a vessel bringing it from Liverpool on board of the *Mersey*, and the circumstances attending the discharge of the *Mersey* and the reloading her for her outward voyage strongly import that the transactions were under a common interest and superintendence.

The master had been for years acquainted with Roberts and with

Sawyer and Menendez, yet treated with the latter as owners of the vessel and cargo, and was to act as their agent in the disposition of the cargo and in obtaining a return one at the port of alleged destination. The mate, contrary to the assertion of the master, considered him to have been appointed by Roberts. So hurried and confused does the business seem to have been in its transaction, that the master says, on his examination, that he does not know the capacity of the vessel. The mate says that she was of about fifty tons burden, and the steward estimates her at two hundred tons.

The shipping agreement with the crew is from Nassau to Baltimore and back, without specification of time of employment; and the letter of instruction and advice to the consignee, for the disposition of the adventure, gives no other directions as to a return cargo than a reference to the counsel and advice of the master.

Such obscurity and looseness in conducting a mercantile voyage gives occasion for suspicion that something was connected with it, and designed to be carried into effect by it, which was cautiously kept out of view; and the notorious course of trade and intercommunication between Nassau and Charleston, from the breaking out of the war to this day, gives occasion to a strong presumption that it was purposed, on the part of those who managed the Mersey, that she should fulfil the business on which she started at Charleston, by returning directly back to the place of her departure with a cargo adapted to that market. It would be no uncommon device to adopt a circuitous back track, and remove from the papers all outward marks of culpability in its initiation.

The evidence bearing upon this branch of the inquiry, although negative in form, is efficient in character if it sustains the interpretation put upon it by the libellants. They charge that the log-book, arrested with the vessel, has been mutilated and spoliated so as to destroy or conceal entries evidently made upon it originally. Such an act, if committed, supplies convincing evidence of an attempt by the vessel to perpetrate a fraud or deceit, in violation of the law of nations, for which she and her cargo are subject to forfeiture.

The master of the vessel testifies that she was captured and taken in tow at about 30° north latitude, but he does not remember the longitude. The mate answers the interrogatory in about the same language; and the steward says he does not know and never heard what was the longitude of the capture, but it was somewhere in the Gulf stream. And they all say that the vessel was thence taken to Port Royal. It is marked on the log of the vessel to have been latitude 30° 17', longi-

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The Mersey.

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tude  $79^{\circ} 33'$ , at  $3\frac{1}{2}$  p. m., when she was taken in tow by the captors, and that she, in tow of the capturing vessel, made land the next morning between nine and ten o'clock, against heavy weather. The portion of the log-book taken with the vessel notes the latitude of the place of departure of the vessel to be  $27^{\circ} 7'$ , and the longitude  $79^{\circ} 13'$ . The latitude of Baltimore is laid down on the charts as  $39^{\circ} 17' N.$ , and the longitude  $76^{\circ} 36' W.$ , and Charleston is in longitude  $79^{\circ} 54'$ , and latitude  $32^{\circ} 47'$ .

It will be perceived, by the statement of the longitudes of the point of departure of the vessel and that of her alleged point of destination, that she had, between 10 o'clock a. m. of Thursday and  $3\frac{1}{2}$  p. m. of Saturday, varied her position towards the coast of the blockaded States, southerly, off and below Charleston, about three degrees of north latitude and one degree of west longitude, and was three degrees west of the longitude of Baltimore. No reason or excuse is assigned for such apparent approach to the coast, nor is it shown to have been the regular line of navigation for Baltimore. Indeed the ship's company deny all knowledge of her position in that respect. Whether such ignorance is real or simulated might be explained by a perfect log, recording the route intended to be run on the voyage, and the impediments or causes preventing the fulfilment of such purpose.

This renders the solution of the inquiry pertinent and important, whether the log found on board had been mutilated or varied surreptitiously after the vessel left Nassau. Her transit directly in front of the line of blockaded ports would pass through about eleven degrees of latitude.

The English and American prize law regards the act of destroying or mutilating the ship's papers (among which log-books rank as of primary importance) to be proof of *mala fides* in the actors, and to demand the worst presumption against those concerned in it. It will always be inferred that the papers relate to the ship or cargo, and that it was of material consequence to some unlawful interests that the papers should be destroyed or suppressed. The suppression or spoliation of papers is not now considered in the American or English courts as, *per se*, the necessary damnatory cause of forfeiture of vessel and cargo, (The Pizarro, 2 Wheat., 227,) but it raises a strong presumption of fraudulent purposes in those having charge of the ship and papers, which will effect the condemnation of the prize if not satisfactorily explained and accounted for. (The Two Brothers, 1 Ch. Rob., 131; The Hunter, 1 Dods., 480.)

Notwithstanding the exceedingly positive assertion of the master, mate, and steward, in their examination *in preparatorio*, that no alteration or destruction of any papers on board had been made, the log is produced palpably mutilated by having the first leaf torn or cut from the paper book out of which the log is formed, so as to leave marks of writing or figuring visible upon the first page thereof, and leading to a strong presumption that other entries had also been made upon the second page, because that method of keeping the log is subsequently followed to the time of the capture of the vessel. The other half of that sheet, the left side of the outward one, remains entire, and the whole book is stitched through the middle folding of the same, the broken edge of the displaced leaf showing marks of writing still upon it outside of the stitching which fastened it.

Two circumstances thus apparent on the face of the log, as it stands, demand clear explanation from the testimony of the master and mate. One is, why no regular entry is made by name of the port of departure on the voyage and of the port of destination, if really a fair trading adventure was contemplated between two neutral ports. Another particular gathered from the dismembered log contrasts very unfavorably with the positive averments of the master and mate in their examinations. The note on the bottom of the first written entry in the log represents the longitude of the vessel at the hour of her departure (10 a. m., Thursday, April 24, 1862) to be  $79^{\circ} 13'$ , and on Saturday, April 26, when taken in tow by the captors, the entry represents the vessel to be in longitude  $79^{\circ} 33'$ , only twenty minutes west of her point of departure, whilst the mate testifies that she was arrested about one hundred miles from land, and the master, in the face of that entry, swears he had no knowledge of the longitude of the place of her capture.

It is moreover observable that the remarks heading the first two remaining pages of the log omit naming the month as well as the place of beginning of the voyage, leaving the implication very strong that those particulars, as well as others tending to shed light upon the enterprise, had been duly registered in the first opening of the log account thereof, and that the after leaves had been continued as if the preliminary facts and others characterizing the voyage were already duly recorded.

I therefore hold that, upon the evidence, the log must have been thoughtfully changed or spoliated, and that in judgment of law such alteration or suppression was made with intent to mislead and deceive with regard to the purpose of the voyage, and is, therefore, fraudulent,

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The Sarah.

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as against the rights of the United States as a belligerent power, and affords evidence of culpability which, coupled with other marks of disguised and dishonest practices, authorizes and demands the condemnation of the vessel and cargo.

Without dwelling longer upon special points of law or fact in the case, the result is—

1st. The vessel left Charleston as enemy property, and no attempted change of it to neutral property was made until her arrival in Nassau. There is no evidence of a *bona fide* consideration paid for her purchase, or of a bill of sale executed thereof, or of actual possession delivered to the alleged purchaser, or that he ever exercised acts of ownership over the vessel, or claimed to be her owner.

2d. She came out of Charleston by evading the blockade of the port, and was seized on her first voyage subsequent thereto. (The Christiansberg, 6 Ch. Rob., 376, 382, notes; The General Hamilton, 6 Ch. Rob., 62.)

3d. The alleged voyage from Nassau to Baltimore was simulated and unreal and was meant for a blockaded port. The mutilated log, the description of cargo on transportation, the mode of fitting out and conducting the enterprise, the notorious course of dealing and trade to and from Nassau since the war, and the misrepresentations in the log and in the testimony of the master and mate of the approach of the vessel, when captured, towards Charleston, are facts justifying strong suspicions of her integrity and honesty, and must prevail against her in the absence of exculpatory proof.

For the causes indicated I adjudge the vessel and cargo confiscable in this suit, and decree their condemnation and forfeiture accordingly.\*

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THE SLOOP SARAH AND CARGO.

Vessel and cargo condemned as enemy property.

(Before BETTS, J., July 28, 1862.)

BETTS, J. : The pleadings and preparatory proofs show that this vessel and cargo were enemy property, owned in Mobile, and were captured in the Gulf stream, off Mobile and Ship island; that in the latter place the vessel was delivered to the government, on appraisal, and that the cargo was sent to New York for adjudication.

The allegations of the libel are fully sustained by the evidence, and condemnation of both vessel and cargo are decreed accordingly.

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\* This decree was reversed on appeal, by the circuit court, July 17, 1863.



## THE SCHOONER LUCY C. HOLMES AND CARGO.

Vessel and cargo condemned as enemy property.

(Before BETTS, J., July 28, 1862.)

BETTS, J.: This vessel and cargo were captured off the coast of North Carolina, May 22, 1862, by the United States steamer Santiago de Cuba, and were sent into this port as prize. The vessel and cargo were owned in South Carolina, and sailed from that port for Nassau, New Providence.

No proof being furnished from the papers, or the examinations *in preparatorio*, vindicating the honesty of the vessel and cargo, both of them are, upon the pleadings and proofs, condemned as enemy property, and decreed to be forfeited.

## THE SLOOP NEW EAGLE AND CARGO.

Vessel and cargo condemned as enemy property.

(Before BETTS, J., July 28, 1862.)

BETTS, J.: This vessel and cargo were captured by the United States mortar-boat Mathew Vassar, May 6, 1862, in the Gulf of Mexico. The sloop was taken to Ship island, and appropriated to the use of the United States, and the cargo was transported to New York, and was here arrested and condemned by default. The vessel was sailing under the confederate flag, and she and her cargo were owned in the seceded States, and were accordingly enemy property. Both, upon the legal proofs before the court, are lawful prize of war, and are condemned, as such, to forfeiture.

## THE SCHOONER JESSE J. COX AND CARGO.

Vessel and cargo condemned as enemy property, and for a violation of the blockade.

(Before BETTS, J., July, 1862.)

BETTS, J.: This schooner was captured as prize by the United States gunboat Cayuga, on the 25th of March, 1862, in the Gulf of Mexico, and was sent for adjudication to this port, where she was libelled on the 6th of June last. The attachment was duly served, and notice given by the marshal, according to law, on the 24th of June last.

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The Agnes H. Ward.

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The facts established by the preparatory proofs and the papers found on board of the vessel are, that the vessel was registered at Mobile, March 17, 1862, under the oath of a resident in the Confederate States, as the property of him and an association of owners there resident. Shipping articles were filed at the custom-house in Mobile, on the 19th of March, between the master and crew of the vessel, for a voyage from the port of Mobile to a place not named, but left blank in the articles; but the manifest of the cargo, dated the same day, was from Mobile to Havana. The master was put in charge of the vessel about the 15th of March, to run her from Mobile to Havana. Her cargo was cotton and turpentine, shipped and owned at Mobile by the owners of the vessel. She left Mobile under the confederate flag, and was captured, on the 28th of March, about two hundred miles out of the port, and was taken by the captors to Ship island, where the vessel was appropriated to the military use of the United States, by order of General Butler, then in command of the United States forces at that place, and the cargo was transmitted to, and delivered at, this port.

Upon these facts, it is clear that the vessel and cargo were at the time of capture enemy property, and that the vessel was under the enemy flag, and had broken the blockade of Mobile in entering upon her voyage.

Judgment of condemnation and forfeiture accordingly is rendered.

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THE SCHOONER AGNES H. WARD AND CARGO.

Vessel and cargo condemned as enemy property, and for a violation of the blockade.

(Before BETTS, J., July, 1862.)

BETTS, J.: This vessel and cargo were libelled on the 6th of June last, and an attachment was issued, returnable on the 1st of July instant, and was returned on that day.

The vessel and cargo were captured on the Atlantic ocean, two hundred miles from Cape Hatteras, and off the coast of South Carolina, by a merchant steamer, on the 27th of May, 1862, and were sent into this port for adjudication. The vessel and cargo were owned by residents in Wilmington, North Carolina. The schooner sailed out of Wilmington for Nassau, N. P., under the confederate flag, and had no other on board. She left the mouth of Cape Fear river for Nassau, N. P., with a cargo of cotton and turpentine, to avoid the vessels blockading the

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*The Nassau.*

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port of Wilmington, and was to return to the same port. The master and all the persons on board knew of the blockade of the port of Wilmington when the voyage commenced. The register and shipping articles, and the other ship's papers, show that the vessel was documented as an enemy vessel, and the testimony of the master and mate proves her evasion of the blockade, well knowing its existence.

Upon the proofs, the vessel and cargo are clearly subject to condemnation and forfeiture, both as enemy property and for being sailed from a blockaded port with intent to violate the blockade.

Decree accordingly.

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THE STEAMER NASSAU AND CARGO.

On a motion for the sale of a cargo pending the hearing, on the ground that it is in a perishing condition, the judgment of the prize commissioners, founded on their inspection, as evidenced by their report, will prevail, unless controlling evidence is produced counteracting their judgment.

A sale ordered in this case.

(Before BETTS, J., July, 1862.)

BETTS, J.: On Saturday last, motions were made in behalf of the libellants, upon two reports of the prize commissioners, supported, in respect to the vessel, by the affidavit of the marshal, and in relation to the arms, by the deposition of Orison Blunt, stating that, in the opinion of the commissioners, and on their examination and personal inspection, the rifles laden on board the prize vessel Nassau are deteriorated by swettage and rust from water, and that the vessel is rapidly leaking, and is kept afloat with difficulty, and that both the vessel and her cargo of arms are in a perishing condition. The reports advise the court that, for the causes aforesaid, the said vessel and arms should be immediately sold, which recommendations of the commissioners the United States attorney moves the court to have carried into effect.

Mr. Edwards, on the part of the claimants, opposes the motion for the sale of either the vessel or the arms, upon a report of one of the port wardens, that, in his opinion, the leakage of the vessel is not such as to render her state a perishing one, and because neither portion of the seized property having been yet condemned, the court ought not to deprive the claimants of their rights to the property in kind, in case it be acquitted on trial of the charges on which it was captured as prize.

It appears to the court that, in a case of speculative differences of opinion between witnesses, whether the condition of property seized

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Harlan & Others vs. The Steamer Nassau.

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as prize "*be perishing or perishable, or deteriorating in value,*" the judgment reported to the court by the commissioners should prevail, unless controlling evidence is produced counteracting their judgment, this matter being very pointedly placed by Congress under their supervision.

There is no such proof furnished in this instance. The balance of evidence, in particularity and precision, is in concurrence with the report of the commissioners, and the strong terms of the act (act of March 25, 1862, § 1) would indicate that the proceedings of the court should be greatly guided by the judgment of these officers, who are specially charged with the duty of ascertaining and making known to the court these particulars.

The general argument against the expediency of subjecting property to peremptory sale before condemnation or trial must yield to the provisions of positive law. It does not lie with the court to prejudge the manner in which the prize commissioners shall conduct their possession or management of prize property before sale. The facts now laid before the court are, in my judgment, abundantly sufficient to authorize the sale of the vessel and the arms specified in these motions.

An order for such sale will be entered accordingly.

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HARLAN AND OTHERS vs. THE STEAMER NASSAU.

A motion being made by the libellants in a private suit for the sale of the vessel as perishing, and it appearing that the vessel was under capture as prize of war, the motion was denied. The capture as prize overrides and supplants all private liens.

(Before BETTS, J., July, 1862.)

BETTS, J.: Mr. Williams, for the libellants, moves the court, on the service of copies of affidavits and notice of motion upon the proctors for the claimants of vessel and cargo, for an order directing her immediate sale, because of the perishing condition of the ship.

The United States district attorney intervenes, and informs the court that the vessel and cargo are under capture by the United States, as prize of war, and were committed to the custody of the prize commissioners in this port as such, on the 2d day of June last, by a prize-master, who brought the said vessel from sea into this port for that purpose. A certificate of the prize commissioners, under their seal of office, dated June 27, 1862, verifying that fact, is laid before the court, and the district attorney objects to the competency of any private suitors to interfere with or molest such military possession, except through the authority of the prize court.

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The Actor.

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The property vests primarily in the sovereign, and is held by him in trust, in a state of abeyance as to the right of property, or in a state of legal sequestration, until the right is passed upon by the prize courts of the country of the captor. (1 Kent's Comm., 101, 103.) The capture as prize overrides and supplants all claims of private liens, (Wheat. on Captures, 80, art. 15;) and whether the seizure of the property is one of prize or not, is exclusively a question under the cognizance of the prize court in the first instance. (Jennings v. Carson, 4 Cranch., 2.)

This motion, therefore, cannot be sustained against the legal possession of the vessel as prize of war.

Motion denied.



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THE SCHOONER ACTOR AND CARGO.

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The rule of the prize law is, that the master and some of the crew of a prize vessel must be brought in to be examined as witnesses to the facts attending the seizure.

The rule will be dispensed with in a case where there is no physical means of complying with it on the part of the captors.

Where the personal production of the ship's company is satisfactorily excused, the court will suspend proceedings in the cause, or admit secondary evidence.

In this case none of the ship's company being produced as witnesses, and there not being sufficient evidence to condemn the vessel under the practice of the English prize court, the court allowed the libellants time, not exceeding a year and a day from the institution of the suit, to produce proof that the vessel was arrested in fact and was lawful prize of war, and that the more direct testimony usually produced to that end was not legally at command of the libellants.

(Before BETTS, J., July, 1862.)

BETTS, J.: This vessel, with her lading, was captured in Pamlico river, North Carolina, March 6, 1862, by the United States steamer Ceres, and was remitted to this port for adjudication, and was here libelled by the libellants as prize of war. The attachment issued on the libel was served on the vessel June 17, 1862, and was returned as ground for the proclamation in court July 8 thereafter, and no person appearing thereon, judgment by default was entered against the vessel and her lading.

The general practice of the prize court requires, in cases of vessels seized, that the master and others of his crew on board at the time of the capture shall be brought in with the vessel, to be examined as witnesses to the facts attending the seizure. (Wheat. on Cap., 280.) So rigorously in its terms is this doctrine laid down in the books, that it is denounced as fatal to the enforcement of the arrest by the court if the captors fail to produce in the prize court those members of the captured vessel. (The Dame Catherine de Workern, 1 Hay. & Mar.,

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The Actor.

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244; Introd. Godolph. Treat. Adm., 25, 26; The Henrick and Maria, 4 Ch. Rob., 47.)

The ordinary rule in prize cases is, that, in the first instance, the evidence shall be drawn from the claimants. (The Haabet, 6 Ch. Rob., 58, note.) The requirement must, however, be subject to the necessities of the case, and it is only imperative that this rule of proof be fulfilled when there is physical means of complying with it on the part of the captors.

Commodore Rowan, who remitted the prize to the charge of the court, advised the court by letter that no persons present at the capture were sent with the vessel because she sank after her capture, and those persons were no longer present to be forwarded. The evidence is not made clear or precise as to the facts which transpired. It is stated, in the papers coming before the court with the vessel, that she was driven from her anchorage after her capture, and was sunk in North Carolina waters, and that the vessel's company were thus separated from her. There is no full testimony as to these intimations, nor as to what circumstances have, in fact, kept the crew away; but the distance to the place is so considerable as to excuse some delay in collecting explanatory proofs if the law demands them in this condition of the case. If the ship's company are destroyed in battle on the capture, or abandon the vessel and escape, or other reasonable cause prevents or excuses their personal production by the captors as witnesses in court, then, unquestionably, it is within the competency of the court to suspend proceedings in the cause, or admit secondary evidence, provided a *delictum* is charged which justified the arrest of the vessel. The papers brought in as belonging to the vessel indicate that she was documented by confederate authority in a blockaded port for another blockaded port, and was thus palpably enemy property; and no doubt the American prize rules, strictly carried out in practice, excuse further proof, after a regular default in court and adequate evidence given *aliunde* of actual capture made.

No claimant has intervened for the vessel or cargo, and evidence sufficient to authorize her condemnation, under the practice of the English prize court, not having been laid before this court a respite of sentence in the case may be made, to enable the libellants to offer further proofs showing that the vessel was arrested in fact, and was, at the time of her capture, lawful prize of war, the more direct testimony usually produced to that end not being legally at command of the libellants. A final decree in the cause will, accordingly, be deferred to such convenient period as may be asked for by the district attor-

ney, not exceeding a year and a day from the time of the institution of this suit, to enable the libellants to produce further proofs as to the facts upon which they seek the condemnation and forfeiture demanded by the libel.

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#### THE STEAMER MEMPHIS AND CARGO.

This vessel having been sent in to the court as a prize, the court, on the application of the district attorney before libel filed, and before any appearance by any claimant, and without notice to any claimant, made an order appointing appraisers to value the prize, with the view to her being taken for the use of the government. After the libel was filed the claimant appeared in the suit, and moved to vacate the order because it was made without notice to him. *Held*, that the motion could not be granted.

Property captured as prize is under the control of the court from the time it is delivered to the court by the prize-master until it is finally disposed of, and the filing of a libel is not necessary to give the court cognizance of the property.

\*The fact that the order appointing appraisers was signed by the judge when out of this district is no objection to its validity.

(Before BETTS, J., August 20, 1862.)

BETTS, J.: This vessel and cargo were captured, off Charleston harbor, July 31, 1862, and brought into this port, by a prize-master, on the 4th of August afterwards. On the 7th of August the district attorney addressed a letter to the judge, then absent from the city, and out of the district, stating that no appearance had been given in court for the prize, and, upon the usual evidence, requesting, in behalf of the government, that appraisers might be appointed to value the vessel and cargo, and that thereupon the prize might be appropriated and delivered over to the public use, on the deposit of its appraised value in the office of the assistant treasurer, subject to the judgment and direction of the court. The order was signed by the judge and remitted to the district attorney, and was filed in court on the 13th of August. By the papers filed on this motion it would appear that the order so signed was received here on the 9th of August. On the 8th of August the vessel and her fitments were libelled by the United States for condemnation as prize of war, and on the 9th of the month the claimants gave notice to the district attorney of their appearance in the suit. Upon these facts a motion is now made to vacate the above order of appraisal made in this suit, or for such other or further order as may be just. No specific order is indicated in the notice of motion, as sought for, other than one setting aside or vacating the order formerly granted, and the exception to that order would seem, on the papers, to be confined to a merely technical irregularity in the district attorney's office in not furnishing the claimants with previous notice of the application.

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The Memphis.

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The court would scarcely regard as of sufficient force to rescind the order the circumstance that a severe strictness in the mode of procedure in obtaining it, it being substantially one of course, was not observed. No objection of substance or to the merits is now interposed, either to the qualifications or integrity of the appraisers named, or to the amount of appraisement; and the criticism that the claimants were not called in to participate in their selection would be entitled, in such case, to slight weight, connected with the consideration that it does not appear affirmatively that the claimants actually entered their appearance in the suit until after the libellants had obtained the ratification of the appraisers proposed. It is not supposed that any court would be prone to reverse proceedings resting upon the explicit consent and solicitation of a party in interest, because of the mere omission of formalities by him in obtaining the subject-matter of his pursuit, and with which no other party then before the court was entitled to interfere.

The question of the jurisdiction of the court, or its competency to authorize the appointment of appraisers at the time, will be considered under the other and main objection raised and discussed on the counter motion of the district attorney to execute the order by delivering over the vessel to the use of the libellants.

The point most strenuously urged by the several counsel was that the prize court acquires no cognizance of a prize case except by means of a libel, which causes an arrest, in law, of the property captured, and subjects it thereafter to judicial jurisdiction. This, it appears to me, is a manifest misapprehension of the state of the matter under the jurisprudence of the United States. The prize vessel and all her cargo and papers are, in the first instance, transmitted by the officer making the capture to the charge of the judge of the district to which such prize is ordered to proceed. (2 U. S. Stat. at Large, art. 7.) The standing prize rules, fully confirmed by the act of Congress "relative to judicial proceedings upon captured property and the administration of the law of prize," approved March 25, 1862, place the property captured under the control of the court and its officers, until the final adjudication and disposal of it by the court. The notion, therefore, that the prerogative powers of the government can be exercised only directly by the United States in its military capacity, and not at all through the courts, cannot be supported under our laws. Those high functions are legitimately put in force by the instrumentality of the judiciary, in obtaining, through its agency, the active use of the possession of prize property, which first vests in that department.



Accordingly, an order for the appraisal of captured property, and the surrender or transfer of it to governmental uses, under precautionary provisions to secure individual interests vesting in it, is palpably a judicial power, to be performed at the instance of the government, and need not, if indeed it can, be superseded or dispensed with by a direct and summary act of appropriation of the property by the executive authority.

It is not intended, in the decision of this case, to go beyond the facts directly involved in it. I accordingly hold that the order asked for by the district attorney was correctly granted by the judge, on the assent, on the part of the libellants, to his authority to make it before any party was known to have intervened in the suit; and that, no objections being established against the competency of the appraisers, or the justness of their valuation of the property seized, the order be now adopted and confirmed by the court, in all its terms, and be executed accordingly.

This decision does not proceed upon the assumption that the judge, when out of his territorial district, can, of his own option, perform functions strictly judicial. The act of appointing appraisers *ex parte* would be performed by an order of course, entered in the book of orders within the district, and the signature of the judge given thereto in a neighboring district does no more than authenticate the ministerial act of the officers of the court, or permit them to perform it *apud acta*. I think, therefore, that this objection, as made, does not invalidate the signature, as given, or the force of the order.

Order accordingly.

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#### THE STEAMER ELLA WARLEY AND CARGO.

The practice of this court is settled, that where the captors desire to take to their own use the property captured as prize, its value is to be ascertained by sworn appraisal, and deposited in court, or in the treasury, subject to the order of the court.

The court prefers this method to that of taking bail, and regards a sworn appraisal as a more satisfactory mode of ascertaining the value of prize property than an auction sale.

(Before BETTS, J., August, 1862.)

BETTS, J.: This case embraces the exceptions raised in the last case to the authority of the court to order an appraisal of prize property, and its transfer to the libellants. The decision of that point is, accordingly, controlled by the previous case of *The Memphis*.

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The Ella Warley.

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A further question is made and discussed, relating to the powers of the court to act upon the final disposal of the property otherwise than by means of a judgment of forfeiture, and a sale thereof by execution. It is insisted that the claimants are entitled to have the value of the property tested and ascertained by the form of a judicial and public sale. The prerogative right of the captors to take the property seized to their own use is modified only in subserviency to the modern law of war, that, in case a judicial confiscation of it is not secured, the captors are responsible over for its value to the lawful proprietor. That responsibility may be secured to the claimant by bail, in court, for its worth, or other equivalent protection to such contingent right. The usage of this court is, to place the value, in deposit in the registry of the court, or in the United States treasury, subject to the authority of the court, to be restored and paid to the claimant in case of the acquittal of the property, in place of relying upon individual undertakings or responsibilities therefor. The court is not convinced of the greater propriety or certainty of resorting to an auction sale of property as a means of ascertaining its reasonable value, particularly when both parties stand in court alike asserting a legal ownership to it. That method may approach nearer to the worth of an article which possesses no steady mercantile value, and is subject to sudden fluctuations, under speculative excitements or emergencies. The condition of a state of peace or war must naturally affect the salable value of arms and munitions of war, in general trade or local transactions, producing, at times, sudden alterations in the demand and supply. We have witnessed such changes in the progress of the present war; but, the fitful state of the market at any of these periods would measure but imperfectly the worth of the commodity, as an article of trade and merchandise. Particularly, the salableness at auction may readily, by dishonest collusions, be augmented or depressed, so as to take from such a sale all just evidence of the transaction being one between vendor and purchaser, calculated to determine the value of the article between them. It appears to me that, in such a condition of things, the general judgment would confide in the honest valuation of discreet individuals, well acquainted with the subject, rather than in the result of palpitating excitement at a public sale, in fixing the price which should be paid to the claimant, provided the government should be proved not to be the lawful owner of the property.

There is high authority in support of the expediency of an auction sale to effect that end, (*The Euphrates*, 1 Gall., 451; *The Diana*, 2

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 Costs, Fees, and Compensation in Prize Cases.
 

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Id., 93;) and this preference, it is understood, is concurred in by the practice of the prize court in Pennsylvania. But all the decisions must rest on the same principle—that it is competent to the government, through the agency of the courts, to take immediate possession and use of captured property, on guaranteeing, by bail or deposit, at its worth, the restoration of its value to its lawful claimants. It is, therefore, a question of expediency, addressed to the sound discretion of the court, whether that value shall be ascertained by auction sale, or by the appraisal of individual appraisers. In many instances, as where the prize cannot be brought into port, or the public necessities compel its instant appropriation or arrest, an appraisal affords the only method of fixing its value. That course has been repeatedly adopted by this court during the war, and I perceive no reasons for directing a public sale to that end, when an appraisal is feasible.

The method, therefore, of guaranteeing the interests of the claimants, through the pledge, by deposit, of a sum fixed by a sworn appraisal, I regard as superior to one by bail or collateral security only, and to be preferred to an auction sale, as a criterion of the worth of the property taken.

The order prayed for by the district attorney is, therefore, granted.

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 COSTS, FEES, AND COMPENSATION IN PRIZE CASES.

(August, 1862.)

BETTS, J.: Bills of costs are laid before me for taxation in behalf of the district attorney, the marshal, the prize commissioners, and the counsel for captors, made up in prize suits which have been adjudicated in the court.

The following principles of allowance will be applied in the taxation of costs in prize cases:

1. No specific tariff of fees having been appointed to the suits by statute, the costs fixed by statute for similar services in admiralty will be allowed in this court, except as otherwise directed by acts posterior to the fee-bill of February 26, 1833.
2. The compensation directed to be made by the act of March 25, 1862, to the officers therein named, will be computed and adjusted, as nearly as may be, conformably to allowances by the laws of the United States to employés for like services under the government, or in accordance with established rules and usages of the courts in regard to their officers rendering like services. In cases of doubt or difficulty, evidence may be taken on the question of *quantum meruit*.
3. The gross costs taxed to any of the officers of court for services in prize suits will be, in collection or payment, subject to all limitations, as to amounts or periods of payment, under the acts of Congress in force at the time of such taxation.
4. The method of ascertaining the compensation of any of the officers of court for their services in prize suits, by a percentage on the value of the property coming officially into their possession or under their charge, will not be adopted by the court without express authority of law, or the assent thereto, in writing, by the parties whose interests are to be affected thereby.

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The Ella Warley.

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## THE STEAMER ELLA WARLEY AND CARGO.

The authority of the court to appraise property captured as prize, and to transfer it to the use of the government before condemnation, at its appraised value, maintained.

(Before BETTS, J., September 4, 1862.)

BETTS, J.: In this case an order for the appraisal of the cargo of arms had been given in behalf of the United States, but the appraisal made by the appraisers having been withdrawn, the United States attorney gave notice to the proctor for the claimants that he would move for the appointment of new appraisers.

The objections taken by the counsel for the claimants to the authority of the court to appraise the property seized, and to transfer it to the United States at the appraised value, were renewed on this motion; and the position was restated that the property could only be properly disposed of by the court by public auction.

By strict law, enemy property captured by a belligerent in time of war becomes the property of the capturing power, and may be appropriated by it to its own use. (Wheaton's International Law, ch. 2, § 5.) But, in relation to property captured as prize, there has been universally and immemorially recognized by the maritime law of nations, an established method of determining, through the agency of courts of justice created by the capturing power, whether the capture be or be not lawful prize. (Chitty's Law of Nations, ch. 3.) The courts of the United States adopt the law of nations in its modern state of purity. (*Ware v. Hylton*, 3 Dall., 199, 281.) The prize law is administered in the United States conformably to principles recognized in the English jurisprudence at the time of the adoption of the Constitution. (*Jennings v. Carson*, 4 Cranch, 23, 24, note; *Brown v. The United States*, 8 Cranch, per Story, J., 137, 139.) The practice in the United States courts under the confederation, and in the tribunals of most maritime nations, is of similar purport and effect. (5 Wheat., App., 52; *Brown v. The United States*, 8 Cranch, 130, 131, per Story, J.) In England, the prize vests in the lord high admiral, and not in the Crown. (2 Brown's Civ. and Adm. Law, 56.) In the United States, it becomes the property of the government. (*The Dos Hermanos*, 10 Wheat., 306.) But in each country there are special regulations, under the prize acts, qualifying the public interest in prizes, and regulating the distribution of their proceeds.

Both parties are substantially actors in prize suits, both demanding from the court the thing in contest, (*Jennings v. Carson*, 4 Cranch, 2,)

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*The Ella Warley.*

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and each has power, after an issue, to carry out the procedure to final judgment. Yet the captors are effectively the parties coming before the court, primarily, as owners and possessors of the property. They demand a judgment, confirming the incipient right acquired by seizure, and rendering it an absolute ownership at law. The decree would thus become one of transfer and conveyance to the captors, of the property arrested, by confiscation; but, with a view to ulterior rights in the value seized, it being partible among the captors, the property is not assigned, by judgment, to the captors in kind, but, under the rules of procedure in this court, is converted into money, and the money is distributed in aliquot shares.

Judge Story, in his summary of the law of prize, seems to have given to the decision in *The Copenhagen*, (3 Ch. Rob., 178,) an operation beyond the range of that case. The case only related to the legal rights of a claimant, and had no reference to those of the captors, (1 Wheat., App., 502, note;) and in two decisions rendered by the circuit court of the United States in Massachusetts, (*The Ship Argo*, 1 Gall., 150; *The Diana*, 2 Gall., 93,) the denial of the right to bail captured property was made only as against the claimants, and the ruling was based upon the case of *The Copenhagen*, which was supposed to be so limited by Sir William Scott. The privileges or restrictions as to captors are not mentioned in that case, and it appears that both by the English and American practice, a delivery of prize property by sale and bail is permitted in cases of reasonable necessity. (*The Falcon*, 6 Ch. Rob., 194; *The Arabella*, 2 Gall., 372; 2 Wheat., App., 51 to 53.) It is not material to this proceeding which interpretation of the rule of bailing prevails, only so far as it touches the rights of parties prosecuting as lawful possessors and owners of property under arrest. No decision questions the competency of a prize court to bail or sell prize property before condemnation, which is in a perishing or perishable state, reserving the proceeds to be adjudicated to the true owner. Such power is just as absolute as that of a direct appropriation of it by the captors, subject to like conditions, and it must necessarily result that it is to be executed by the court under advisement, according to its judgment of the most expedient method of performing the duty. In numerous cases which have already occurred, and been heretofore acted upon by this court, property captured in the Gulf of Mexico, and otherwise distant from this port, has been adjudged to the use of the United States, on report of the naval commander making the capture, and of a sworn appraisement of its value; and in those in-

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The Annie.

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stances it would be physically impracticable to subject the property to an auction sale, or to delivery on bail.

I retain the conviction that the government possesses the legal right of claiming a direct appropriation to public use of captured property, and that the courts are bound to carry such demand into execution, according to the usual course of procedure before it, and that the course proposed by the order moved for in this suit is allowable and proper.

Order accordingly.

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THE SLOOP ANNIE AND CARGO.

Condemnation withheld, and proceedings suspended for sixty days, to allow the libellants to produce testimony in support of the libel, there being no testimony from witnesses present at the capture.

(Before BETTS, J., September 20, 1862.)

BETTS, J.: The facts appearing upon the pleadings and proofs show that this vessel and cargo were captured April 29, 1862, off Mobile, by the United States war steamer Kanawha. The cargo was sent into this port as prize, on board the steamer Baltic, where it was libelled for condemnation July 17 thereafter, and the process of attachment thereon was filed August 5, 1862. The sloop was left at Ship island, and it does not appear that she has been proceeded against further where she was arrested, or that she has since been brought within the territorial jurisdiction of the court.

Pursuant to the act of Congress of March 25, 1862, the prize commissioners examined the above cargo in this port, and on the 12th of July reported to the court that it "was perishing, or perishable, or deteriorating in value," and recommended its sale. The court, thereupon, on the same day, on motion of the United States district attorney, made an interlocutory order, directing a sale of the cargo to be made by the marshal, under execution, and the proceeds to be deposited in court.

The alleged cargo of the vessel was thus duly arrested in this suit, and on the return day of the process, no party intervening, the United States attorney moved for the default of the cargo, and that the proofs *in preparatorio* in court be opened, and that the court proceed to render judgment of condemnation against the property arrested. Under these circumstances, the pleadings and proofs in the case are submitted to the consideration of the court.

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The Mary Stewart.

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There is in the case, as presented to the court, the absence of all proof showing a legal act of capture of the vessel. Such legal arrest cannot be implied from the mere fact of possession or from default in claiming the property on its prosecution before the court in this district. Preliminary to all right of prosecution there must be proof of the actual arrest of the *res* under color or claim of right; and this must be evidence given by witnesses to the act. (Pratt's Prize Practice, 45, 46; 1 Wheat., App., 496)

The case of the schooner Actor, decided in this court in July term last, involves the principle presented in this case. Reasonable excuse was presented for the non-production of witnesses present at the capture, and the court ordered a respite of further proceedings in the cause for a year and a day, to enable the libellants to furnish the required evidence.

The present transaction occurred off Mobile, in April last, and all the evidence before the court indicates that the captured crew were at Ship island when the cargo was transmitted to this district. The active continuance of hostilities at that remote point has probably diverted the attention of the libellants from the posture of this case, particularly as no one has intervened to claim the cargo or vessel.

It is, therefore, ordered by the court, that proceedings in the cause be suspended for sixty days from this day, and that the district attorney take measures to produce testimony in this suit in support of the libel against the vessel, or show cause why it be not dismissed for want of prosecution.

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THE SCHOONER MARY STEWART AND CARGO.

Vessel and cargo condemned for an attempt to violate the blockade.

(Before BETTS, J., September, 1862.)

BETTS, J.: The above vessel and cargo were seized, as lawful prize, June 1, 1862, off South Carolina, at sea, by the United States bark Gem of the Seas, and sent into this port for adjudication, and were here libelled and attached, July 7, 1862. On the 29th of the same month an interlocutory order was granted by the court, directing the sale of the schooner and her cargo, as perishing property. It being proved to the court that the vessel was chased by the bark off the South Carolina coast, and was abandoned by all the persons on board of her before she was seized, and that, when she was arrested, she was

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1,253 Bags of Rice, 103 Casks of Rice.

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found wholly deserted, it was ordered, that persons present on board of the capturing vessel be examined *in preparatorio* in the suit.

It is proved that the schooner and her cargo were captured about six miles off North Santee river, on the coast of South Carolina, she appearing to be running the blockade of some southern port. She was cleared from Nassau for St. John, N. B., and such was her voyage, according to her crew list. The invoice of her cargo, found on board, was from Nassau for Baltimore. Her manifest was for a cargo of salt, and some oil and tea. The log-book produced contains no entry of the schooner's being chased or abandoned. The entries are continued from May 22, 1862, at Nassau, to Monday, June 2, and were kept as if the vessel was keeping a regular course of sailing.

The preparatory proof given by the captors shows that the vessel was making a direct course towards an inlet off the port of Charleston when chased by the capturing vessel. The crew all deserted her, and have never since been apprehended. No appearance has been entered for vessel or cargo. On the evidence, there is no room for doubt that she was engaged in the endeavor to violate the blockade of the port of Charleston, and a decree must be entered condemning vessel and cargo to forfeiture for the offence.

Decree accordingly.

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1,253 BAGS OF RICE, 103 CASKS OF RICE.

Property seized by an armed vessel of the United States empowered to make prizes while afloat in an enemy port, on board of an enemy vessel, is lawful prize under the law of nations.  
 Enemy property captured by a public vessel in an enemy port, although, when seized, stored in a warehouse on land, near the water, held, under the facts in this case, to be lawful prize.

(Before BETTS, J., September, 1862.)

BETTS, J.: The first above named action is for the forfeiture of 1,253 bags of rice captured in lighters afloat on the Edisto, or North Santee river, in South Carolina, on the 30th of January, 1862, by the United States gunboat Albatross and her consort, and brought into this port for adjudication. The lighters had, at the time of the capture, no crews or persons on board, and have not been brought into port for adjudication. The gunboats were armed vessels of the United States, empowered to make prizes, and the property seized was taken afloat, in an enemy port, on board enemy vessels. That is a capture within the law of prize, independently of any special legislation authorizing it. (Wheat. on Captures, 14, § 3; Genoa and its Dependencies, 2 Dods., 444; Pratt's Prize Practice, 115; 2 Wheat., App., 71, by Story, J.;



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1,253 Bags of Rice, 103 Casks of Rice.

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The Donna Barbara, 2 Hagg., 366; The Charlotte, 1 Dods., 220; The Melomane, 5 Ch. Rob., 51.) No legislation was required in respect to the seizure of enemy property found within the belligerent territory at the commencement of hostilities. The case of *Brown v. The United States* (8 Cranch, 110) only calls for such legislation when the seizure is made within the territory of the captors.

In the first suit above named, the launches or small boats of the gunboats acted under the full powers of the gunboats themselves, in effecting the capture; and, therefore, there is legal cause for the attachment of the property as prize.

The vessels, when seized, having been deserted by their crews, the libellants are entitled to prove the facts and circumstances of the capture by other testimony. The assistant surgeon, then acting on board of the Albatross, was present, and proves that the property seized was within the enemy's territory. No person appearing to the suit, or giving evidence as to the innocency of the cargoes so seized, the libellants are entitled to a judgment of condemnation and forfeiture of the cargoes, as enemy property and prize of war, upon the regular default entered. (2 Wheat., App., 20.)

The distinction in respect to the second above-named suit is, that the rice there captured was not water-borne when seized, but was found stored in a warehouse in the enemy's country, contiguous to the river up which the United States vessels were pursuing the enemy's vessels, which were, seemingly, endeavoring to convey the two parcels of rice to the enemy's troops in Charleston. The river on which the warehouse stood communicated with Charleston harbor, and was entered by the ship-of-war and her boats. The warehouse and the rice deposited in it were captured by the launches of the Albatross and her consort. Rebel forces, stationed near the warehouse, fired upon the United States forces when making the capture, and the fire was returned at the time by the United States vessels which were engaged in the capture. The property was laden on board of vessels of the captors, and was sent to New York for adjudication. The question specially presented in this suit is, whether the seizure on land was, in law, a maritime capture.

The libel is sufficient in form in a suit by the government. It might be vitally defective in a prosecution in behalf of private cruisers, unless subsequently ratified by the sovereign. (*Brown v. The United States*, 8 Cranch, 130 to 133.) And, although no defence is inter-

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The Ella Warley.

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posed, the court will look at the record to see that the case is within its cognizance.

The decision upon the merits, in *Brown v. The United States*, went upon the principle that the enemy property there seized was landed in this country before the war commenced between England and the United States, and that it was not liable to capture as prize, in the absence of positive law authorizing its seizure. The majority of the court who adopted that doctrine did not controvert the decision of the circuit court, declaring the suit to be of a prize character, nor the historical and juridical fact that the practice of the United States courts is governed by the rules of admiralty law disclosed in the English reports. (*Glass v. The sloop Betsey*, 3 Dall., 6.) It is very clear that in England the prize jurisdiction does not depend upon locality, but upon the subject-matter. As is said by Sir William Scott, in the *Rebeckah*, (1 Ch. Rob., 227,) this was a maritime capture, effected by naval persons using a force subject to their use, distinguished from an ordinary land force subject to military persons, and was, therefore, a maritime prize. (1 Kent's Comm., 356.)

The casks of rice proceeded against in the second suit are, therefore, properly confiscable as prize, being enemy property, captured by public vessels, in an enemy port.

Decree accordingly.

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THE STEAMER ELLA WARLEY AND CARGO.

Motion by the libellants for the sale of the vessel, because she is in a perishing condition, granted.

(Before BETTS, J., September, 1862.)

BETTS, J.: The motion by the United States district attorney to sell the vessel, because she is in a perishing condition, must, on the evidence before the court, be granted, for that shows her condition to be one eminently exposing her to great injury, if not to immediate total loss. The claimant's proofs and objections only lead to a belief that she may be protected, if not wholly saved, by a more vigilant care bestowed upon her by her keepers, and particularly by pumping her watchfully, and perhaps by other acts of precaution. These must necessarily require expenditures, and the marshal or the prize commissioners, as legal custodians of the prize, pending her keeping in court, are supplied with no means or authority to cause such expenditures to be made. Justice to both parties claiming the vessel demands that a sale of her be ordered. If the claimants were to intervene and offer bail for her value, the objection to her sale would rest upon sounder

grounds, but all proffers of such extraneous aid to her preservation by either party leave the case open for an application, by one claiming a legal right in her, to require a sale of the perishable thing, and have its proceeds put in safety. This is consonant to the ordinary practice in admiralty in suits *in rem*.

Sale ordered accordingly.

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THE SCHOONER SARAH AND CAROLINE AND CARGO.

Cargo condemned, on further proof, for a violation of blockade by the vessel.

(Before BETTS, J., September, 1862.)

BETTS, J.: This case was called for hearing July 29, 1862, but, on examination, it was found that there was no proof furnished convicting the property of any confiscable offence, and the court ordered the proceedings in the suit to be suspended, and, no person appearing to defend the property seized, or to claim it, gave leave to the United States attorney to offer further proofs within a year and day. On the 15th of September, instant, proofs *in preparatorio* in the cause were laid before the court. Charles G. Loring, an acting-master in the United States navy, testified that he was present at the capture of the schooner, at the mouth of the St. John's river, in East Florida, on the 11th of December, 1861, by the United States vessel-of war *Bienville*. The schooner was being towed out of port by a steamer. She was pursued and fired upon by the *Bienville*, and was then dropped by the steamer, and changed her course, and endeavored to get back into port. She was overtaken by the *Bienville*, and was found deserted by her crew and anchored at the mouth of the St. John's river. The *Bienville* was one of the blockading squadron off that port. The schooner was laden with turpentine and a few shingles. She was captured about 6 o'clock in the evening. The port was under an order of blockade, and the vessel was endeavoring to break the blockade when arrested. She was detained by the United States flag-officer at Beaufort, South Carolina, and the cargo seized on board was transmitted to this port.

The vessel was of about fifty tons burden. Letters were found on board of her addressed to Nassau, N. P., but no papers were brought from her into this port with her cargo. This evidence leaves no ground to doubt that the vessel was captured in the act of violating the blockade, and the cargo seized on board of her became liable to forfeiture from that cause.

Decree of condemnation accordingly.

## THE SCHOONER ACTOR AND CARGO.

On further proof, vessel and cargo condemned as enemy property.

(Before BETTS, J., September, 1862.)

BETTS, J. : This vessel and cargo were captured early in March, 1862, in Pamlico sound, North Carolina, by the United States gun-boat Ceres, and were brought to this port and here libelled as prize, June 17, 1862, and on return of the monition and notice, no one appearing to defend the property seized, the case was submitted to the court for decision. On examination it was found that no legal proof was furnished of the capture of the vessel and of the cause of it; and on motion of the United States attorney, July 18, 1862, a year and day were allowed to the captors to bring in further proofs.

On such proofs being taken and submitted to the court, it is made to appear that the vessel and cargo were seized in Pamlico sound, and belonged to residents within enemy territory; that after the capture the vessel and cargo were sunk at Hatteras inlet in a gale of wind, and were subsequently raised by pilots and brought by them to this port for the captors; and that the crew found on board at the time of capture had left the prize, and have not been brought into this port for examination. No defence having been interposed, and it appearing satisfactorily to the court, on the evidence of witnesses present at the seizure, that the vessel and cargo were enemy property, it is ordered that a decree of condemnation for that cause be entered in the suit.

Order accordingly.

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THE SCHOONER SHARK AND CARGO.

Vessel and cargo condemned for a violation of the blockade and as enemy property.

The master, who was part owner of the vessel, and who was the only witness examined *in preparatorio*, testified that he was ignorant of the blockade; but the court, on all the facts, held that he knew of it.

A loyal citizen, or a resident of a loyal State, cannot, with impunity, employ his vessel in trade with the enemy or in favoring the insurrection.

The omission of the captors of a vessel to bring in the captured crew will not inure to defeat a capture by a government vessel.

(Before BETTS, J., September, 1862.)

BETTS, J. : The capture of this vessel and cargo was made by the United States war steamer South Carolina, July 4, 1861, in the Gulf of Mexico, off Galveston bar, the vessel being then in the act of steering into Galveston.

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The Shark.

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The vessel and cargo were sent by the captors to this port for adjudication, and were here libelled as lawful prize August 24 thereafter. A judgment by default was subsequently vacated at the instance of the master of the vessel, and he was permitted to intervene, and file his claim and answer in the suit, and contest the case before the court on the proofs *in preparatorio*. The master having been examined before the prize commissioners, and his evidence being offered by the district attorney on the hearing in court, the testimony previously taken, on the order of the court, of a witness not on board of the captured vessel, was, on the motion of the proctor for the claimant, excluded, and the case was heard solely upon the papers found on board of the vessel and the examination *in preparatorio* of her master.

The vessel was built in Portsmouth, New Hampshire, under the direction of the master, in November, 1860, for the other two owners, resident in Galveston, and was taken thence by the master in January, 1861, and, by agreement at that place with them, the master became joint owner with them of the vessel. She was enrolled, on the oath of ownership made by the master and claimant, at the customhouse in Galveston, January 16, 1861, the master swearing that he owned one-fourth, Theodore Holmes three-eighths, and R. Jameson three-eighths, and that all the owners were residents of Galveston. She was licensed to him on the same proof. The enrolment and license were not changed to the time of her capture.

The master intervened and claimed the vessel for all the owners, and the cargo as carrier for the shippers. On his examination *in preparatorio* he testifies that he took title to one-fourth of the vessel merely to secure his advances in building and fitting her, and took and retained command of her from the time she was launched, with that object. He also swore that he was a resident of New York, and never had been of Galveston.

The vessel, when arrested, was on a voyage to Galveston from the port of Berwick, Louisiana. The cargo was shipped by Wakefield & Wilder, agents for residents or owners in New Orleans or Berwick, one of whom was on board at the time, consigned to various persons at Galveston. No one intervened as owner for the cargo. It consisted, as appears on the manifests and bills of lading, of miscellaneous articles, malt, hops, sugar, salt, medicines, coils of rope, whiskey, cigars, bagging, &c. Louisiana seceded from the Union January 26, 1861, and Texas passed its secession ordinance March 4 there-

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The Shark.

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after. The ports of Louisiana and Texas were declared to be under blockade by the President's proclamation of April 19, 1861, and, more than two months after that, this vessel and cargo were seized in the act of making the port of Galveston, with the intention, as the captain testifies, to enter that port, having left the port of Berwick, in Louisiana, for that purpose. In this attempt the vessel was intercepted and captured by a vessel-of-war on blockade duty off the port. The master testifies, on his examination, that he had no knowledge or notice of the blockade. Very possibly he may not have received direct personal and reliable notice of any actual blockade already carried into effect, but he had heard that the United States steamer Brooklyn was blockading New Orleans at the Southwest Pass. It has appeared before the court, in the progress of these prize suits, that commanding officers of the navy had assigned and stationed ships-of-war to the duty of blockading ports on the Gulf of Mexico, along our southern coast, about the middle of June, 1861, and the master says that he had, previous to his arrest, made several voyages along the coast of Texas to the different ports, with cargoes of corn, flour, country produce, and merchandise. The court is also judicially apprised that the United States war vessels were active in endeavoring to enforce the blockade, by repeated seizures within the period during which this vessel was probably so employed. These facts, coupled with the knowledge avowed by the master, that a blockading ship was then lying before the mouth of the Mississippi, but a few miles, topographically, from Berwick bay, and with his practice of conveying cargoes to and from New Orleans by the way of Berwick bay, and an intermediate transportation, by railway, of eighty miles, (not by inland navigation, by canal or other water-course,) afford a very strong presumption that this course of business was favored because of the hazards of exposure to blockading cruisers expected to be hovering outside, and that the danger of such exposure could not have escaped the notice of the claimant. I shall, at all events, hold the circumstances sufficiently impressive to require the corroboration of further evidence than the bald assertion of a part owner of the vessel, to satisfy me of his real ignorance of facts liable to be of general notoriety, and which immediately affected his personal interests and employments. Should he deem it important to offer further proofs to this particular, the court will be ready to listen to an application on his behalf to that end; otherwise I shall consider the circumstances as sufficiently importing notice to a person so connected as he was

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The Shark.

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with the coasting trade along that exact territory, that the government were enforcing the blockade there, and as showing also that he was knowingly concerned in attempts to evade it. This would render him guilty of the double acts of running the blockade out of Berwick bay, and of endeavoring to evade it in making an entrance into a port of Texas.

But, under the facts in proof in the case, it is of slight importance whether the vessel was technically guilty of a violation of blockade or not. Nor in this case is it of any particular moment to determine whether Patterson is a loyal subject and an actual resident of the city of New York, because he could not, in these capacities, with impunity, employ his vessel in trade with the enemy, or in favoring the insurrection. His property would, in either alternative, be subject to confiscation therefor, both by the laws of prize and the statutory law; and irrespective of his ignorance of the law. (12 U. S. Stat. at Large, 319; 1 Chitty's Law of Nations, ch. 1; 1 Kent's Comm., 66, and notes; The Hoop, 1 Ch. Rob., 196.)

So also the whole of the cargo, and certainly three-fourths of the vessel, were enemy property, and therefore confiscable as prize of war wherever apprehended at sea. The vessel was owned in Texas and the cargo in Texas or Louisiana, and both were in a course of sea transportation, in the use and for the benefit of the enemy. The title made on the oath of the claimant, at the enrolment of the vessel, is all vested in declared residents of Texas. The verbal assertion of the claimant in his preparatory proof will not overbear the proofs in the ship's papers—the enrolment and license—that she belonged to Galveston. Moreover, if she had been nominally transferred to a loyal citizen or a neutral friend, and was still permitted to continue in the enemy's trade, she would be also liable to condemnation for that cause. (The Vigilantia, 1 Ch. Rob., 1; The Princessa, 2 Id., 51.)

The irregularity on the part of the captors in omitting to bring in with the vessel and cargo the crew captured on board, will not inure to defeat the capture by a government vessel. The laches of the officers or crew in conducting the public service cannot defeat the rights acquired by the nation by the seizure. It might be different in case of an arrest by private cruisers.

A decree of condemnation of vessel and cargo must be rendered on both grounds.

## THE SCHOONER ANNIE SOPHIA AND CARGO.

Vessel and cargo condemned for an attempt to violate the blockade.

(Before BETTS, J., September, 1862.)

BETTS, J.: This vessel, laden with a cargo of salt, soap, &c., was captured on the 20th of August, 1862, at sea, off Florida or South Carolina, by the United States steamer R. R. Cuyler, and was sent into this port for adjudication. She was libelled for condemnation as prize, September 5, 1862, and, on the return of the monition against the vessel and cargo, September 23, in open court, the defaults of both were duly taken, no one appearing or intervening for them, and a formal decree of default was rendered by the court against them. The ship's papers and the proofs *in preparatorio* in the cause were submitted to the court, and the district attorney thereupon moved for judgment of condemnation and forfeiture in favor of the libellants against the vessel and cargo.

The vessel had on board, when arrested, a British certificate of ownership, dated December 2, 1858, certifying that she was British-built, and that her owner, Saunders, was a resident of Nassau, N. P.; shipping articles for a voyage from Nassau to Baltimore, and back to Nassau, signed by the crew August 10, 1862; a clearance from that port for Baltimore, dated September 16, 1862; and a letter of consignment dated Nassau, August 14, from the owners to Montell & Co., designating the cargo consigned, and the articles to be returned therefor from Baltimore to Nassau. No manifest or bill of lading accompanied the shipment. The preparatory proofs show that the representation of the destination of the vessel and of the object of the voyage was simulated and false, and that the voyage was made up and despatched for any port of the Confederate States into which the vessel could be run. The master was a native of North Carolina, as were also some of his crew. He had a few weeks previously, in violation of the blockade, run a vessel out of Wilmington, North Carolina, to Nassau. He and the owners of this vessel knew all about the war and the blockaded ports. The vessel was not intended to go to Baltimore, and did not steer for that place, but for the blockaded coast, until the capturing ship was observed, and then the schooner shaped her course towards Baltimore. When the master discovered that he was chased, he threw some papers overboard, for fear they might be of injury to the vessel; and the steward testifies that the master, besides the papers, threw over-



board a confederate flag which the schooner had with her. That was done after the schooner was brought to by the steamer, and before the small boat boarded the prize. The two mates assert that they thought the schooner was going to Baltimore, and deny all knowledge that she was to run the blockade. The captain testifies that she was to break the blockade, and the steward says that the captain told the men so after the schooner left Nassau, and before the Cuyler came in sight.

The proof is very clear and satisfactory that the voyage was set on foot and prosecuted with the purpose to run into a blockaded port, and the vessel and cargo are, consequently, lawful prize.

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HARLAN AND OTHERS v. THE STEAMER NASSAU.

In this case, after the vessel had been libelled as prize, a libel on the instance side of the court was filed against her to recover a private claim. The court dismissed the latter libel, holding that the case was under the exclusive jurisdiction of the prize court; that the vessel, while under arrest as prize, could not be attached in a private action, and that relief must be sought in the prize court.

(Before BETTS, J., September 30, 1862.)

BETTS, J.: The libellants sued out a libel on the instance side of the admiralty court, and had this vessel attached thereon on the 17th of June last. After the arrest of the vessel, the libellants, demanding a debt or lien against the vessel as private creditors, moved the court for an interlocutory order of sale, because of its perishing condition. The United States intervened in the suit, alleging that the vessel had been seized by the government as prize of war, and was in their actual custody, under that seizure, at the time of the service of the attachment in this cause. Mr. Edwards also appeared for a private claimant of the vessel. Objection was taken by the intervening parties to the right of the libellants to prosecute the vessel in admiralty while she is held in actual custody by the United States as prize of war. The motion referred to was heard and denied by the court on the 1st of July last, on the ground that the instance court could not take cognizance of a prize capture, and that the remedy of the libellants, if any they had, must be first sought in the prize court, and under its jurisdiction.

On the 22d of September, instant, the case was again brought before the court by the claimant in this action to have the libel dismissed, and by the libellants, in effect, to obtain a reversal of the former decision of the court, and a decree establishing the validity of this suit, notwithstanding the prize action and seizure also pending over this vessel.

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Harlan and Others vs. The Nassau.

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The counsel for the libellants has been indulged in an elaborate and prolonged argument in maintenance of various legal propositions advanced by him in support of his action, but it does not seem to me that the court is called upon to consider the validity of the legal positions taken, or their applicability to the case in hand. The points rest upon the assumption that the condition of hostilities in which the nation is involved is not a war in the sense which renders the property of neutrals employed in hostile acts against the United States, by carrying on trade with the insurgents, or aiding and assisting them in this warfare, or the property of our own citizens seized at sea and intended to be used for their benefit, subject to capture and condemnation by public or municipal law. The court remarked to the counsel, on the opening of his argument, that it seemed quite useless to go into those questions, as being open to discussion in this court on its instance side, in the existing posture of the subject; that, in the earliest sessions of the court on cases of prize jurisdiction, these matters were all brought up and debated by eminent counsel in a series of suits, and were carefully considered by the court and decided, and cases involving all the questions offered for renewed discussion were in the course of immediate revision and final determination before the circuit court of this district and the Supreme Court in full bench; and that this court could not, after administering the law in that acceptation of it for eighteen months, upon the strength of any argument at bar, reverse its former judgments, but would adhere to them until they were acted upon by the higher courts. The counsel still persisted in his anxiety to deliver the argument prepared by him in the case, and, after a careful perusal of the synopsis of it published in the papers, at the same time recalling, so far as practicable, the impressions made by it at the hearing, the court sees no legal reason to surrender its convictions upon the questions involved in the case.

I therefore hold, that the matter charged in the libel presents a case within the jurisdiction of the prize court; that the libellants in this case have no authority in law to attach, in a private action, a vessel or her cargo which is under arrest as prize, and is within the cognizance of the prize court; and that, if the libellants have any legal or equitable demand against the vessel proceeded against in the prize court, the remedy must be sought in that tribunal.

It is ordered that the libel be dismissed, with costs to be taxed.

## THE SLOOP ANNIE AND CARGO.

On further proof, vessel and cargo condemned for a violation of the blockade.

(Before BETTS, J., October 3, 1862.)

BETTS, J.: Further proofs are this day submitted to the court by the district attorney in the above cause, pursuant to the order made September 20, 1862. The papers found on board of the vessel consist of a provisional register, executed by the British consul general in Cuba, to Alexander Borrowman, of Edinburgh, Scotland, presently residing at Havana, April 1, 1862, certifying the vessel to be of foreign build; a declaration, signed and sworn to the same day, before the said consul general, by the said Borrowman, that the vessel was built at Mobile, Alabama, her foreign name being Southern Republic, and that she is wholly owned by Borrowman; shipping articles with the crew, dated at Havana, April 1 and 5, for a voyage from that port to Matamoros and back to Havana; and numerous letters addressed from Mobile to Havana, some accompanying the present adventure, and others of general correspondence. All of these letters are dated immediately previous to the capture of the vessel, and all of them which relate to her or her business speak of the blockade, and of her being employed to run it out of that port, and of such being the usual course of navigation between Cuba and Mobile.

A witness present at the capture of the vessel and cargo testifies, on his examination *in preparatorio*, that the sloop and her cargo were seized on the 29th of April last, coming out of the port of Mobile, in a dark night; that she was bound to Havana, and was endeavoring to escape the blockading forces investing the port; that the cargo was owned by residents of Mobile; and that the captain of the vessel well knew of the blockade, and had previously run it in the same vessel. Letters and papers transmitted from the shippers of the cargo to the consignees speak unreservedly the same language, and show a full knowledge of the illicit employment of this vessel, and the active violation at that port and at contiguous places of the existing blockade as a regular pursuit.

This testimony having been supplied in the cause within the period limited in the former order, and being in no way refuted or discredited, a decree of condemnation and forfeiture of the vessel and cargo, returned by the marshal as attached in this suit, must be entered against them.

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The Joseph H. Toone.

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## THE SCHOONER JOSEPH H. TOONE AND CARGO.

Cargo condemned for an attempt by the vessel to violate the blockade, the vessel not being taken on process in the suit.

Effect of the absence of a log-book, unaccounted for, in time of war.

Simulated papers as to the destination of the vessel.

The general rule of evidence in prize cases is, that, in the first instance, only the ship's papers and the preparatory examinations can be adduced; but in seizures for breach of blockade the captors are permitted to put in affidavits contradicting the preparatory testimony as to the nearness of the captured vessel to the blockaded port, and the acts denoting an intent to evade the blockade.

Redress for wrongs committed by the captors, or for want of diligence in proceeding to the trial of the case, cannot be had by way of defence in the prize suit. It must be sought for by proper pleadings and further proof.

One of the chief evidences of fraud is a vessel's being out of the regular course leading to the port of destination shown on her papers.

(Before BETTS, J., October, 1862.)

BETTS, J.: Although the issue in this suit was taken under formalities manifesting preparations for a formidable contest on the trial, the case was finally heard on the attendance of counsel for the libellants only, with the privilege allowed by the court to the counsel for the claimant of the vessel and the several claimants of the cargo to file briefs in their behalf on the next day.

The first libel was filed November 19, 1861. After a short delay, permitted by the court, the answers and claims of the owner of the vessel, for himself as to the vessel, and in the capacity of agent for several parties, Spanish subjects, residents within the Spanish dominions, for the whole cargo, and the further sole answer in full of one of those claimants personally for a portion of the cargo, were filed on the 31st of December thereafter.

The libellants obtained an order of court authorizing the libel to be amended, April 26, 1862; and on the same day filed an amended libel in the suit against the vessel and cargo. But the warrant thereon was issued against the cargo alone, and no arrest of the vessel in the suit has been returned by the marshal to the court. No further answer was interposed by the claimants; but, since the hearing, by permission of the court as above noted, a brief or note of objections was filed to the action on the merits, by way of argument.

The vessel and cargo were seized as prize, October 1, 1861, in the Gulf of Mexico, between Timbalier island and the Southwest Pass of the Mississippi river, and south of Baratavia bay, by the United States war steamer South Carolina. The vessel was, it seems, on capture, detained for the use and service of the government, but she

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The Joseph H. Toene.

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not being included in the process or its return, no decree can be rendered against her in this action. The cargo was transshipped and sent in another vessel to this port for adjudication. The alleged owner of the vessel, her master, two seamen, and a passenger, all taken on board, were also sent here, and were examined *in preparatorio*. The papers found on board of the vessel are voluminous, but most of them will be passed by without detailed notice, as they have no special bearing upon the judgment now rendered, and most of them relate to transactions and voyages anterior to the war, or the establishment of a blockade of the southern ports in question.

The papers exhibit no other title in Aymar, the claimant to the vessel, than her provisional register in his name, in the British consulate, dated the 25th of September, 1861, and the execution by him on the same day, at the same place, and before the same officer, of a power of attorney to Pennington, the master of the vessel, as his agent, to manage and sell the vessel for him, and in his name. Aymar testifies, in his examination *in preparatorio*, that he bought the vessel from Pennington, the master, in September, 1861, who gave him a bill of sale of her, as attorney of Thomas Flood, a British subject, but no bill of sale is produced in evidence, nor any proof of the payment of the consideration price therefor; and the circumstances indicate that the act of passing the title to Aymar, and his power to dispose of it over, were simultaneous, and in furtherance of a common purpose, whether that be a lawful or illicit one in relation to this country. The vessel was of American build, and at what time she assumed a British character is not shown, otherwise than as above stated. Aymar swears that he is a British subject by birth, and that he is unmarried, and has resided and been in business in New Orleans for eight years. The contrary not being alleged, it will be presumed that his residence and business relations in New Orleans directly preceded his obtaining title to the vessel and appointing the master. He says he had known the vessel for six months, and had known about her for at least eighteen months previously. Though not directly declared in the testimony, the inference is strong that Aymar accompanied the vessel on her voyage out to Havana, for he says that she cleared at New Orleans to sail from Berwick City, in Louisiana, which place she left August 25th or 27th for Havana, in Cuba; and Monsall, the steward, says that he first saw Aymar, who came on board the vessel, at Berwick bay, whence she sailed on her voyage to Havana. The master testifies that she left Berwick for Havana on the 27th of August, and that on

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the voyage prior to the last one, she went from Havana to Berwick bay. The owner and the master both of them knew of the war between the Confederate States and the United States, and that the Louisiana ports were under blockade, before and at the time this and the last voyage were undertaken. The voyage from Havana commenced on the 27th of September. The capture was made October 1st, in the evening, at a point supposed to be thirty-five or forty miles off the Louisiana coast, and, upon some of the representations of the locality, between the island of Timbalier and the main land off and south of Barataria bay.

No log was found on the vessel at her capture, and no account is given, in the proofs, respecting its suppression or existence. As geographical facts, the place of the vessel's departure and the place of her declared destination were on about the same parallel of latitude, Havana being about  $23^{\circ}$  north latitude, and Tampico, named in the manifest and shipping articles as the port of destination, differing but a few minutes from that latitude; whilst the place of capture was in the vicinity of the outlet of the Mississippi river, and on a line nearly equidistant from Havana and Tampico. As given on ordinary maps and charts, Havana, the starting point, is in latitude  $23^{\circ} 9'$  north, and longitude  $82^{\circ}$  west, and Tampico is in latitude  $22^{\circ} 40'$  north, and longitude  $98\frac{1}{2}^{\circ}$  west, so that a direct line from the former to the latter would tend with a slight angle south of west; but the course from Havana, in latitude  $23^{\circ} 9'$  north, to bring the vessel to Timbalier island or Barataria bay, in latitude  $28^{\circ}$  north, and longitude  $90^{\circ}$  west, must necessarily be largely north of west, and be, in length, a distance almost as great as the distance, on a direct course, between Havana and Tampico. The master, in his testimony, says that his course from Havana to the place of capture was northwest. The statements of relative distances and bearings might be noted with more exactness from accurate sea charts, if at hand, but these estimates are sufficiently precise to suggest the just influence of those facts upon the questions to be considered by the court.

The manifest and bills of lading found with the vessel on her capture showed her to be laden with various military stores and equipments, arms and ammunition, contraband of war, together with a general cargo of merchandise.

The defence to the suit is, that the vessel and cargo were neutral property, cleared and intended for a neutral port, and on their direct passage to that port, and were in no way designed for a blockaded

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port, or one in possession of enemies of the United States. The United States do not controvert the allegation that the cargo was neutral. They question the integrity of the transfer of the vessel to the claimant Aymar, at Havana, and deny that the cargo was honestly obtained for a neutral voyage by the claimants, or was intended to be sent to a neutral port, but, on the contrary, assert that it was destined for a blockaded port, and was to be delivered to the enemies of the United States.

The answer and claim was, in the first place, interposed for Aymar, in his own right, to the vessel, through his proctor, and for the cargo, in behalf of various of its shippers. A subsequent answer was, by leave of the court, filed in behalf of other consignees of the cargo, on the 28th of April, 1862. Appended to these papers were long protests and allegations, setting forth irregular and oppressive conduct of the captors, exercised by them in making the capture, both in relation to the vessel and the captured crew. These latter matters will not be regarded on the present issues. The views of the court in respect to that method of defence, and its effect under this state of pleading, have been sufficiently indicated in previous decisions.

The main points upon which the prosecution is resisted are, (1.) that the preparatory proofs and the ship's papers produced on the hearing demonstrate that the property seized was all of it held by neutral owners, and was on transportation, when seized, from one neutral port and country to another, and that no purpose or attempt was made, on the part of the claimants, to violate the blockade laid by the United States on any port of the seceded States; and, (2.) that no imputation of illegality attaches, by the laws of war, to any portion of the voyage, or to the acts or purposes of the claimants in concocting or conducting it. The counter positions by the libellants are, that the proceedings in employing the vessel and the ship's company, and in documenting and conducting her, are replete with indications and presumptions that the enterprise was an illicit one, set on foot and pursued with a manifest design to violate the blockade of the coast of Louisiana, and to convey to the enemy supplies essential to his necessities, and also to transport there a large quantity of articles contraband of war, consisting of munitions and arms.

The witnesses taken on board of the vessel, who are cognizant of any important facts relative to the issues, are Aymar, claiming to be her owner; Pennington, her master; Lewis, a passenger; and two of the hands, one of them being the steward, and the other a seaman—

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probably the mate. The last two furnish no proof respecting the fitting out or conduct of the voyage, except that they knew when the vessel left Berwick bay for Havana that the ports of Louisiana were under blockade; and that Brown, the seaman, says that the vessel had before her capture been heading northward till about 4 p. m. on that day, and then changed her course to south-southwest, because it was thought they sighted the South Point light-house. Brown says that he saw the capturing steamer about 5 o'clock p. m. Both of these witnesses assert that they shipped for Tampico, and believed that the vessel was destined to that port.

Pennington, the master of the vessel, in answer to the 36th interrogatory, evidently attempts to cover the language of the interrogatory by a strict verbal reply to its queries. He says that the light of the South Carolina ahead was discerned at 4 p. m., and was taken to be a light-house; and that, on seeing the vessel, he altered his course from northwest to south-southwest, for Tampico, which course was away from the light; that, when he bore away, he was brought nearly before the wind; and that, when captured, his vessel was six degrees to the northward of her regular course from Havana to Tampico, and between four hundred and five hundred miles, he should think, from Tampico. Aymar, the owner, says, in answer to the same interrogatory, that he does not know the course the vessel was steering, nor how much she was off her true course, when she was captured, nor what alterations were made in her course; and that he heard the captain say his nautical instruments were out of order, and he was anxious to get on to soundings to ascertain his whereabouts. Lewis, the passenger, answers to the same interrogatory, that he understood that the vessel was, when captured, steering for Tampico, and that he does not know that her course was altered on the appearance of the capturing vessel, or to any other course than to Tampico. He says that the wind the whole time from Havana was ahead, and the weather stormy and boisterous, and such as to prevent the master from taking frequent observations, and that he seemed very much at a loss as to his course, owing to some irregularity of the chronometer. The master answers to the same interrogatory, that when he so changed his course, (on coming in sight of the South Carolina,) he "then thought his chronometer was right;" and he says that, "owing to the wind and weather, the vessel was obliged to be where she was" taken. To the 19th interrogatory, he says that he had no observation for thirty-six hours, and that his chronometer was between two



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and three minutes out of the way. It is open to remark that the witness Lewis, a citizen of New Orleans, appears to have been suspiciously connected with the voyage. He shipped under a fictitious name, was a late officer of the United States, and had in his charge twelve hundred blankets, obviously, from his account, provided for military stores, of which he represents himself to be a mere carrier, without any interest in the commodity, and apparently without any acquaintance or connexion with the owner.

Upon this exhibition of facts, the assertion, in the evidence of the owner and master, that the vessel was supposed by them to have been pursuing her direct voyage to Tampico the whole distance she ran until she was intercepted by the capturing vessel, is most inconclusive and suspicious. She left Havana September 27, with a course northwest, and maintained the same for four days, when she was arrested. No witness intimates that the course adopted was a proper one to run from Havana to Tampico. The alleged irregularity of the chronometer may have left the master uncertain as to the distance the vessel had run, and as to how near he was to the soundings on the coast for which he was seeking; but it is not shown to have in any way affected or interfered with the due working of his compass, or with his probable knowledge whether a four-days' northwest course would lead to Tampico, or would terminate on the coast of the United States about opposite, in that direction, to the island of Cuba. Manifestly, as the voyage directly preceding this one, coming from Berwick bay, was in about a southeast direction, the return one on a northwest line would be likely to end about where the former one commenced.

The testimony of the passenger, Lewis, does not support the allegations of the master, that the weather prevented his obtaining an observation for thirty-six hours. He only says that the weather was so boisterous and adverse as to prevent *frequent* observations on the transit, which necessarily implies that *some* observations were actually taken. Where those were made, and at what time, and what was the result, is not disclosed in the evidence of the master, or of any other witness. Besides, as the weather had become moderate and the wind mild at the time the capturing vessel came in view, it is not made to appear but that the weather was of the like character all the period of the run, except (according to the estimate of the master) a term of thirty-six hours; leaving it to be presumed that during nearly two-

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thirds of the period of the passage of the vessel ample time and opportunity were afforded her to be navigated without wandering, for the whole distance she sailed, in a direction entirely away from the point to which she is alleged to have been destined, and almost literally back in the track pursued on her outward voyage. The absence of a log-book, unaccounted for, is matter of distrust, in time of war, as to the integrity of purpose in the outfit and operations of a trading vessel captured under equivocal and disparaging circumstances; as it is a document so usual and important, as evidence of the transactions of a ship navigating abroad, and one which so universally accompanies trading vessels employed in foreign commerce. (*Dana's Seaman's Friend*, 145, 193.) Its absence gives room for presumption that material matters have been fraudulently suppressed, and particularly where an object may exist for keeping it out of view. Entries of the casualties occurring on the voyage, of the courses and distances pursued, and of other incidents attending the navigation, are items appropriate to the log, and are always appealed to, and forcibly so, in support or refutation of testimony given by the crew in regard to navigation on board, and may become especially pertinent in prize cases in reference to voyages in the face of blockaded ports. Under these considerations of the proofs given respecting the real destination of the vessel from Havana, there arise cogent suspicions that Tampico was not at the inception of the voyage intended to be its termination, and that the bills of lading, manifests, and shipping articles were simulated and falsified in that particular. It is to be observed, moreover, that the bills of lading are drawn to order or assigns, or are indorsed in blank, and would thus be as available at New Orleans as in Tampico, and no letters of instructions to any consignees are found among the ship's papers. The owner of the vessel is with the vessel, accompanying the voyage and cargo, on no avowed business; and the whole affair wears, on the proofs, the aspect of being under his sole charge and for his interests. Brown, the mate, speaks of no defect in the chronometer, or lack of observations on the voyage. He denies that the vessel changed her course because of the appearance of the capturing vessel, and alleges that the steamer was first seen an hour after the change of course. In this his testimony conflicts with that of the master, and the other witnesses make no express statements on the point. All of these witnesses seem to concur in the representation that the vessel was captured out at sea, some thirty-five or forty miles from the coast. It was mild weather and night-time, and, under

such circumstances, a ship-of-war would be apt to lie close in shore while enforcing a blockade, particularly on a low coast, with numerous inlets and outlets of the character of that approached by this vessel, in order to have a readier inspection of and control over them.

The general rule of evidence in prize suits is, that, in the first instance, only the ship's papers and the preparatory examinations can be adduced, and the case must ordinarily be put to hearing on these proofs. (*The Vigilantia*, 1 Ch. Rob., 1.) But this rule is not inflexible, and, particularly in seizures for breach of blockade, the captors are permitted to put in affidavits contradicting the preparatory testimony as to the nearness of the captured vessel to the blockaded port, and the acts denoting an intent to evade the blockade. (*The Charlotte Christine*, 6 Ch. Rob., 101.) The deposition of the prize master in this case (a master's mate in the United States navy) states that he was present at the capture of the schooner, and that when first seen she was heading in shore, about half way between Tambalier bay and the Southwest Pass, being about nine miles distant when first discovered. But without regarding this deposition as of any necessity in the cause, other than as importing that the conjectural estimate of the men on board of the prize, that she was 35 or 40 miles out at sea from the coast when seized, cannot be confided in as affording a reliable assertion that she was not heading towards the coast in such vicinity as to imply a purpose to make a landing there; and laying out of view this deposition entirely, I am convinced, from the preparatory testimony itself, that the vessel was on the direct road to a blockaded port with intent to enter it, and that she changed her course only after discovering the blockading ship, and did so to avoid that ship. Had she been honestly searching for soundings, under the expectation that she was upon a lawful course, she would eagerly have put herself in communication with that ship to obtain information of the fact, and would not have veered off to sea before the wind in a direction widely divergent from, if not opposite to, the one she had been pursuing. The allegations of the witnesses examined *in preparatorio* were intentionally deceptive, in stating that she was steering towards Tampico when seized, because she turned suddenly and broadly off the course she had headed and pursued during her whole run, and only took that towards Tampico on the appearance of the steamer in her way immediately before her arrest, and, without attempting to speak the steamer, ran from her before the wind until chased and brought to by the guns of the latter.

I do not need to lay any stress, in the decision of the cause, as a reason

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for the condemnation of the vessel as enemy property, on the fact that she was owned by a domiciled trader in New Orleans at the time her voyage was undertaken thence, and when she sailed from Berwick bay, in August, 1861; or on the fact that she was transferred also to a domiciled trader, the present claimant, in September afterwards; or on the fact that, with the knowledge of both vendor and vendee, she evaded the blockade of the ports of Louisiana on that voyage, and that her present voyage, if not a continuance of the same voyage, was the next or subsequent one in time to it; or on the consideration that the alleged transfer of the title to the vessel is not proved by the bill of sale thereof, and is not shown to have been on an actual payment therefor of any money consideration; or on the consideration that the alleged purchase, if valid in law, as a transaction in a neutral territory, conferred no title to the claimant as against the United States; for I think that the evidence adequately proves that the prize vessel was despatched from Havana with the purpose of evading the blockade in the Gulf of Mexico, and of conveying and landing within an enemy port articles contraband of war, destined for the use of the enemies of the United States, then being in a state of war against this country, and that such purpose was attempted to be carried out during her whole voyage.

Several grounds of defence are taken by the claimants to the suit. One of them is that these proceedings on the capture are irregular and erroneous, because the vessel was, after seizure, appropriated to the use of the government, and has since also, without trial and condemnation, been totally destroyed, and lost to the claimant. This objection is not before the court by any form of legal issue, but is presented by way of argument. The allegation cannot in that way become the subject of adjudication and judicial remedy. If the public prosecutor has been guilty of remissness in not pursuing the condemnation of the vessel with due diligence, that delinquency may probably be corrected by libel and monition sued out on the part of the claimants; and redress for other collateral injuries, supposed to have been wrongfully committed by the captors, should be sought for by proper pleadings and further proofs. *Prima facie*, it will be assumed by the court on this trial that reasonable cause existed in the case for the commanding officer to take the captured vessel directly into the public service, without awaiting the usual course of a prosecution at law, and that the act is justifiable in law. (*Jecker v. Montgomery*, 13 How., 498; 8. C., 18 How., 110.)

By the port of destination, in maritime law, is meant the real one

the vessel is going to, not merely the one entered on the ship's papers. (Mosely on Contraband of War, 29.) One of the chief evidences of fraud is a vessel's being out of the regular course on which she ought to be going—her being found off the road to her destined port, as shown by her papers. (Mosely on Contraband, 98.) An illusive destination is one of the most heinous falsifications of a ship's papers in time of war, and in such case the ship carrying contraband of war, and all the rest of the cargo, as being in common infected with fraud, are embraced in a common condemnation and forfeiture when not otherwise protected by treaty stipulations. (1 Kent's Comm., 143, notes *a* and *b*.)

I think the deduction from the evidence in the case is irrefragable that this vessel and all her cargo, composed in part of contraband of war, were intentionally on the road to an enemy port, and off the course to the port of destination named in the vessel's papers, and were attempting to enter an enemy port and violate the blockade thereof, and that both the vessel and her entire cargo are subject to forfeiture therefor.

I am of opinion that just grounds exist, upon the proofs, for the condemnation of all the property captured and libelled in this case; but the proceedings in court against the vessel not having been regularly perfected, the decree of condemnation will be entered against the cargo alone.\*

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#### THE SCHOONER EZILDA AND CARGO.

The court cannot, in a prize case, notice, on final hearing, exceptions to proceedings before the prize commissioners, because of alleged irregularities in the admission of testimony, or in the method of conducting the examinations, or to the competency of the witnesses examined. Relief in respect to such matters must be sought by a special motion, on notice to the district attorney, pointing out the irregularities complained of.

Vessel and cargo condemned for the following causes:

1. The vessel was enemy property.
2. There was an attempt to violate the blockade.
3. A large part of the cargo was contraband of war, and was laden on the vessel with knowledge, on the part of her owner and of the other freighters of the cargo, that the voyage was an illicit one, and was destined to a port of the enemy.

(Before BETTS, J., October, 1862.)

BETTS, J: The cargo proceeded against in this suit was captured at sea, on board of and with the schooner Ezilda, September 30, 1861, by the United States steamer South Carolina, the day preceding and at the same place with the capture of the Joseph H. Toone, named in the previous cause. The Ezilda was subsequently, after appraisal,

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\* This decree was affirmed, on appeal, by the circuit court, July 17, 1863.

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The Ezilda.

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appropriated by the captors to the use of the United States, and the cargo was transmitted by other sea conveyance to this port for adjudication. The libel against the cargo, as prize of war, was filed November 23, 1861. On the return of the monition and attachment, on the same day, a proctor appeared for the claimant, and, on the 10th of December thereafter, obtained from the court an order allowing him three weeks' further time to put in a claim and answer to the libel. The answer and claim was filed December 31, 1861. On the 23d of May, 1862, the libellants moved for and obtained from the court an order to amend the title of this suit, so as to make it "The United States v. The schooner Ezilda, her tackle, and cargo," which order was granted by the court, after notice to the claimant's proctor, and in his presence in court. No further claim or answer has been filed.

The answer put in legally inures only to form an issue with the libel, and the vituperative tone of its assertions respecting the captors and the witnesses might have been spared in a paper having no further effect in the suit than to fulfil a legal formula, and to give the respondent a standing in court, to be heard upon the law and the facts drawn from the ship's papers and the witnesses present at her capture.

The appearance and answer are limited to the vessel alone. No answer or claim has been interposed for the cargo. The case was submitted to the court for decision, on written points and briefs, by the counsel for the respective parties, and without oral argument, on the 9th of October, 1862.

The court cannot notice, on final hearing, exceptions to proceedings before the prize commissioners, because of alleged irregularities in the admission of testimony, or in the method of conducting the examinations, or to the competency of witnesses examined. If there was ground for rectifying or suppressing the proofs for any like cause, the application to do so should have been brought before the court on special motion, with notice to the district attorney, pointing out the irregularities or deficiencies complained of, and praying the proper relief.

The prize commissioners report the testimony of three witnesses examined before them *in preparatorio* in the suit—William A. Hicks, navigator for the voyage, on board the prize, William Johnstone, mate, and Charles A. Scott, seaman. One of the witnesses was examined November 27, and the other two December 5, 1861, before the prize commissioners, and the dépositions were placed in the registry of the court. The ship's papers produced before the prize commissioners, as reported by them to the court, consist of a provisional register of

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The Ezilda.

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the vessel, taken before the British consulate at Havana, dated September 16, 1861, registering the vessel in that port to William Henry Aymar, a British subject; a bill of sale of the vessel to the said Aymar by Peter Foster, of Boston, Massachusetts, dated September 13, 1861; shipping articles, dated September 19, 1861, for a voyage on board the Ezilda from Havana "to the port of Matamoras, or any other port or ports of the Gulf of Mexico, and back to Havana," which articles were signed by three persons, only one of whom was found with the vessel when she was captured; various bills of parts of the cargo; some invoices, and a bill of health. Most of the exhibits represent the intended voyage to be from Havana to Matamoras; but, in addition to the special language in the shipping articles covering all ports in the Gulf of Mexico, and necessarily embracing confederate ports, the bill of lading executed on the 18th of September, 1861, at Havana, by the then captain of the schooner, Sullivan, expressly states that the vessel is "bound for either of the Confederate States ports, not further south than Brazos." The answers of the acting master, the mate, and the seaman, prove that the vessel was bound to Barataria, or some other enemy port; that Aymar, her owner, was proprietor, with Brudendorf, her former master, of the cargo, and that the vessel and cargo were really destined for the enemy, and were intended to run the known blockade of enemy ports. The testimony of the owner, Aymer, invoked from the case of the Joseph H. Toone, proves that he was a domiciled trader in New Orleans.

There seems to me, therefore, no room for doubt that the vessel and cargo are subject to forfeiture for each of three causes:

First. There was no *bona fide* neutral ownership of the vessel in the claimant Aymer. Second. The voyage was set on foot at Havana with intent to violate the blockade of the port of New Orleans, and the vessel and cargo were captured directly on the coast of Louisiana, whilst attempting to execute that purpose. Third. A large part of the cargo was contraband of war, and was laden on the vessel with knowledge, on the part of her owner and of the other freighters of the cargo, that the voyage was an illicit one, and was destined for the confederate or secession States of the Union.

It is, therefore, ordered that judgment of condemnation and forfeiture of the vessel and cargo be rendered in this suit.\*

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\* This decree was affirmed, on appeal, by the circuit court, November 11, 1863.

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The William H. Northrop.

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## THE SCHOONER WILLIAM H. NORTHROP AND CARGO.

The alleged sale of an enemy vessel, in time of war, by an enemy resident in the enemy country, to a neutral, held not to be proved.

The object of the transaction was to have the neutral put the vessel in trade with an enemy port, in evasion of an existing blockade of that port.

A settled course of trade in violating the blockade, and the employment of the vessel before in such trade, and the fact that her claimant had before been engaged in such trade, taken into consideration in deciding this case.

Vessel condemned as enemy property.

Vessel and cargo condemned for an attempt to violate the blockade.

(Before BETTS, J., October, 1862.)

BETTS, J.: This vessel and her cargo were libelled in this suit January 17, 1862. Both were captured as prize December 25, 1861, at sea, within soundings, sixty or seventy miles off Wilmington, North Carolina, by the United States ship-of-war Fernandina, and were sent to this port for adjudication, and here attached by process of law, returnable and returned in court, duly served, February 4, 1862. Mr. Archibald, the British consul, intervened in the cause, and filed a claim to the vessel and cargo, as the property of British subjects, February 18, 1862, and the cause was brought to hearing on that issue at the present term.

The documentary proof of ownership of the vessel consists in the certificate of her registry at Nassau, N. P., August 12, 1861, to Joseph Roberts, of that place. That document states that she was built at Wilmington, North Carolina, in the year 1859. The only written evidences of the employment or destination of the vessel subsequently to that registry are shipping articles executed at Wilmington, North Carolina, between Silliman, master of the vessel, and her crew, for a voyage from Wilmington to one or more ports in the West Indies, for a time not exceeding two months, and back to the port of Wilmington, North Carolina, which agreement was signed by the master and four seamen, at Wilmington, September 18 and 19, 1861, and by two other seamen, at the same place—one on the 27th of September, and the other on the 31st of October thereafter; a manifest of the cargo of the vessel, dated August 12, 1861, stating that it was taken on board at the Bahamas and bound for \_\_\_\_\_, under the description of the cargo, on the face of which manifest, signed by Silliman, it is noted in pencil, "went to Wilmington;" the manifest of the master, dated at Eleuthera, Bahamas, August 24, 1861, stating that the cargo was shipped by Silliman, the spaces on the face of which manifest, marked "to whom consigned," "place of consignee's



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The William H. Northrop.

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residence," "ports of destination," left to be filled, all remain in blank, and on the face of it, under the description of the cargo, is entered a note, in broad pencil-mark, "went to Wilmington;" and a memorandum in writing, not dated or signed, as follows: "Mem. sch. Wm. H. Northrop, of Nassau, N. P. Sailed from Currant Cut on the 26th of August, 1861; arrived on the coast of North Carolina on the 31st; saw one large steamship; was not boarded between the edge of the Gulf Stream and Frying Pan shoal; on the first day of September arrived at New inlet; saw no armed vessels of any description, therefore went in, and arrived same day at Wilmington, N. C." There is also connected with these papers a certificate of the British vice-consul, dated at Wilmington, North Carolina, September 19, 1861, authorizing the departure of the vessel from that port on a voyage to the port of Cardenas, Cuba, and asserting that at the date of the arrival of the vessel the port of Wilmington was not blockaded, except by proclamation, by any force of the United States. These are all the papers produced from the ship relating to her voyage after her sale in Nassau, except some accounts current with her and for disbursements for her use in Havana, the last of November, 1861, and a certificate or registry of like date, from the Spanish authorities, of the departure of the vessel, destined, under Captain Silliman, to the port of New York.

No log-book was produced from the vessel evidencing her employment and course of trade and navigation subsequent to the alleged sale of her to the British owner, nor any bill of sale of such transfer, or proof of the actual payment of any consideration on such sale.

Berkheimer, the American owner of the vessel in 1859, appointed Joseph A. Silliman to be her master before her sale at Wilmington, and he was again appointed her master at Nassau by Roberts, the purchaser on the sale there, and again in August, 1861. The vessel, in September, 1861, went from Nassau to Wilmington with a cargo of salt, coffee, and fruit. She took thence a cargo of rice and lumber to Havana, in November, 1861, and sailed thence with a cargo of coffee, medicines, and acids, for New York, and was captured on that voyage about eighty miles (within soundings) east of Wilmington and off Cape Fear. The cargo was at the time of capture owned jointly by the master and Roberts, the owner of the vessel. The master says he had heard at Nassau as early as July, from general conversation and the newspapers, of the war and the blockade of North Carolina, but "did not know positively that the coast was blockaded, but presumed it was." The mate testifies that the master told him the vessel

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The William H. Northrop.

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was bound from Havana to New York, but he had a strong impression she was bound to some southern port; that he thought so because she was so near in shore; and that he and this master knew of the war, and that the whole southern coast was blockaded by the United States government. A seaman who was examined says that all on board knew of the war and of the blockade of North Carolina.

The intervention of the British consul in the cause is official only. He does not supply any proof, by what is called his test affidavit, of the legal ownership of Roberts, the alleged purchaser of the vessel, and none has been furnished by the latter or by any agent of his up to this period. The master, Silliman, gives the only evidence offered on that point. He says that Roberts was owner of the vessel, and that he and the witness were joint owners of the cargo captured; that he (the witness) knew from the registry and from conversation with Roberts that the latter was owner of the vessel, and that he (the witness) saw a bill of sale of the vessel some time in August, 1861, at the counting-house of Messrs. Sawyer & Menendez, of Nassau, acting as agents of Henry Berkheimer, of Wilmington, to Mr. Roberts, of Nassau, and has not seen it since. He says that he was not present when it was made; that he supposes it is now in the custom-house at Nassau; and that he knows of no other engagement concerning the purchase than what appears on the bill of sale. 'This is a very faint and imperfect support of a paper title to a vessel, made in time of war, by an enemy resident in an enemy country, evidently for the purpose of putting her in trade with an enemy port by a neutral, in evasion of an existing blockade of that port.

In the case of *The Bernon*, (1 Ch. Rob., 102,) an enemy vessel was sold and conveyed to a neutral in time of war, and Sir William Scott says, that although such purchases have been allowed to be legal, they are obnoxious to much suspicion, and the court will look into them with great jealousy, even in purchases made for neutrals resident in their own country. The caution embodied in that doctrine is significantly evoked by the incidents intermingled with the present case. And, in respect to a formal bill of sale from the vendor of the vessel, and a note for the payment of the consideration price, with a receipt for its payment, the learned judge held that evidence to be of itself inadequate to establish a lawful purchase, without proof that the purchaser had funds to satisfy the credit, or at least without further verification, by the attesting witnesses, than their mere signatures to the bill of sale, that the transaction was actually fair.

The testimony of Silliman, the master, stands before the court subject to great distrust. He represented to Tibley, the acting mate of the vessel, and to Herring, a seaman on board of the vessel, and during her last voyage, that he hailed from Bordeaux, and was a native of France, while he testifies, on his own examination, that he was born in Philadelphia, and has always lived there, and that he is married, and that his wife lives in that city. The protest which he says he made to the British vice-consul, on entering the port of Wilmington to obtain a certificate of clearance, in September, 1861, appears to flatly contradict a written memorandum of the occurrences on that voyage and of the entry into port, found on the vessel. There is, moreover, in these proofs, a very significant admonition that such consular certificates are entitled to slight consideration, when they are grounded upon dubious representations of that character.

No manifest, clearance, or bills of lading, executed at Havana, are produced from the vessel. Two or three invoices of goods, dated November 30, at Havana, without any consignment or direction to any person, are delivered to the court, with a registry from the Spanish officers of the customs, certifying that the goods had been embarked in the schooner W. H. Northrop, under Captain Silliman, destined to New York. This is doubtless intended to be an official authentication of the despatch of the vessel and cargo from the port of Havana, but fails to identify the same with reasonable certainty. Silliman, the master of the prize, testifies that Cabergoss & Co., of Havana, laded the cargo on board of the schooner; that no consignees thereof were appointed; that that was left to him, Silliman, to determine, on his arrival at New York; that no bills of lading were signed for the cargo; that the only paper relating to it was the invoice of the laders; and that the whole of it belonged to the witness and Roberts.

The master says that the last voyage of the vessel began at Nassau, and that she was to touch at Wilmington and Havana, and end the voyage at Nassau. New York is not named by him as contemplated in the programme of the voyage, nor is that port alluded to in the shipping articles signed at Wilmington after the arrival of the vessel at that port from Nassau, in September, 1861. The master specifies the employments of the vessel under his command, backward and forward, between Wilmington and Nassau, previous to April, 1861, and between those ports since that period, up to the present voyage. The regular course of her navigation and business seems to have corresponded with that notoriously followed at Nassau since the blockade of the rebel

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The William H. Northrop.

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ports, and which the records of this court show to have been also promoted and participated in by Roberts, in like manner as in the present case, and to have become the steady habit of passing in and out of Wilmington, under circumstances manifesting a full notice of the existing state of war with the United States, and of the condition of blockade of Wilmington and the other ports of the rebellious States. This case is thus brought clearly within the rules declared by Sir William Scott, in *The Rosalie and Betty*, (2 Ch. Rob., 343,) and since recognized and enforced in this court, (*The Mersey*,) which import a purpose in those concerned in that line of trade to violate the rights secured to the United States by the law of nations.

It is thus made apparent that the vessel left Wilmington the property of a resident at that port, and in evasion of the blockade, and that this fact was well known to Roberts, in Nassau, at the time of the alleged purchase by him at that port. He gives no legal proof that a *bona fide* and legal transfer has since been made of her to him, a neutral, and in a neutral port.

It is also manifest that the vessel ran into Wilmington from Nassau in September, 1861, knowingly in violation of the blockade of Wilmington, and there fitted out and sailed thence in the same month, destined to ports in the West Indies, and back again to Wilmington, in violation of the blockade. It is also shown, by strong presumption, that the vessel departed in November thereafter from Havana, in the West Indies, in fulfilment of her said shipping articles, and with intent to enter the port of Wilmington, or some other blockaded port of the southern States, and that when she was captured she was pursuing that intention, and attempting to enter a blockaded port.

It must be inferred from the proofs that the scheme of the voyage contemplated a trading enterprise between Nassau and Wilmington, as the commencing and terminating points of the adventure, though other than enemy ports might, in the progress of the voyage, be visited for the purpose of obtaining cargoes or supplies. And it is clear, upon the proofs, that when captured the vessel was in execution of the purpose and attempt to violate the blockade.

A decree of condemnation is, accordingly, ordered against both vessel and cargo.

## THE STEAMER TUBAL CAIN AND CARGO.

Vessel and cargo condemned for an attempt to violate the blockade.

Spoliation of papers by the master.

Refusal of the master to answer interrogatories as to the destination of the vessel.

Part of the cargo contraband of war.

(Before BETTS, J., October, 1862.)

BETTS, J.: This ship is claimed as a British vessel engaged in a lawful trade at the time she was seized. The capture was made by the United States steamer Octorara, July 24, 1862, at sea, in latitude 32°, and longitude 78° 20', about ninety miles off the coast of South Carolina. A claim and answer was filed August 5, 1862, denying the legality of the capture. On the cause being called for hearing at this term, the United States attorney moved for judgment of condemnation on the pleadings and proofs. The counsel for the claimant appeared in court, and contested the condemnation upon the law and facts presented in the suit.

The voyage commenced at Liverpool. By the shipping articles the vessel was destined to Nassau, thence (if required) to any ports and places in the West Indies, and back to a port of discharge in the United Kingdom, within twelve months. She cleared at Liverpool, April 22, 1862, for St. John, New Brunswick. She had on board a miscellaneous cargo, including knapsacks, saltpetre, and cases of rifles, contraband of war. John Smietherwait, of Liverpool, was her sole owner. Henry Lafone, of the same place, was the shipper of the cargo. That was consigned to the master or order. The master destroyed his private papers when pursued by the Octorara, and just before he was captured, and at Nassau, he destroyed his letters of instructions furnished in England; and he says that some of these papers destroyed might have related to the vessel or cargo. Before the ship left England it was well known that ports of the southern States were under blockade. This was also publicly known in Nassau. The vessel was consigned to the master, and the cargo was to be delivered to the holder of the bills of lading.

The master, on his examination *in preparatorio*, declined to answer the eleventh and thirty-fourth interrogatories. On the statement to him of the 39th interrogatory by the commissioner, and a demand of him that he should reply to it, he answered: "I have stated all I know or believe, according to the best of my knowledge and belief, regarding the real and true property and destination of the vessel and cargo

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The Reindeer.

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except as to the port or place to which the vessel was bound when captured, and which I have declined, and do still decline, to state." This refusal of the witness the prize commissioner reported to the court, and, on motion of the district attorney, the court thereupon peremptorily ordered the witness to be re-examined upon the 39th interrogatory, and to answer the same fully and truthfully. The commissioner subsequently reported to the court that, pursuant to the order of the court, he had re-examined the witness to the 39th interrogatory, and that, after it had been fully and distinctly read to the witness, he said: "I have already stated, in my former examination, all I know or believe in regard to the real and true property of the vessel and cargo. I answer, that I intended to go to Charleston, South Carolina, if I could get there, and if not, then to any place on that coast where I could run my ship in." A passenger on the vessel, Levy, testifies that he was bound to Charleston, and understood, from conversation with the officers and crew, that the vessel was to go there.

There was, plainly, a studied exertion, in the papers prepared for the voyage, to give it a semblance of neutrality and honesty which did not belong to it. There is no necessity for imputing to any of the crew a connivance or complicity with the owners of the vessel or cargo, but the contumacy of the master in giving his evidence, and his ultimate avowal of the culpable purpose of the adventure, together with his suppression of the papers in his possession on the voyage, stamps its hostile character as against the United States, and fixes the confiscable character of all the property seized.

A decree is, accordingly, directed to be entered, condemning the vessel and cargo to forfeiture, because both of them were despatched with the intention of violating, and were arrested whilst attempting to violate, the blockade of Charleston; and, also, because it was a part of such intention to import, for the use of the enemy, into his ports, under blockade by the authority of the United States, articles contraband of war.

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THE SCHOONER REINDEER AND CARGO.

Vessel and cargo condemned as enemy property.

(Before BETTS, J., October, 1862.)

BETTS, J.: This vessel and cargo were captured, July 15, 1862, in Aransas bay, Texas, by the United States bark Arthur. The cargo was transported to this port for adjudication, and the marshal

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The Ann.

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returns to the monition which was issued on filing a libel against the prize October 1, 1862, that it was served by attaching the cargo and delivering the vessel to the United States government October 21, 1862.

The vessel and cargo were owned by residents in Texas, and were captured in Aransas bay. Due proclamation and default were made on the return of the monition, and no claim or answer has been interposed.

There must be judgment of condemnation by default against vessel and cargo, and for their confiscation as enemy property.

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THE STEAMER ANN AND CARGO.

Vessel and cargo condemned for a violation of the blockade.

Spoilation of papers by the master.

Part of the cargo contraband of war.

(Before BETTS, J., October, 1862.)

BETTS, J.: This vessel and cargo were captured by the United States naval forces stationed off Mobile, Alabama, June 29, 1862, and were sent thence to this port for adjudication. A libel was filed against them July 17 thereafter, and, on the 9th of September, the owners, British subjects, residents in England, intervened, by their agent, and claimed the vessel and cargo as neutral property, contesting the legality of the seizure, and denying that Mobile was a blockaded port, or that they had lawful warning of such fact. On the hearing of the cause in court, counsel for the claimants appeared and contested the condemnation upon the law and facts of the case.

The substance of the case, on the preparatory proofs, is, that the vessel was fitted out in England, with a cargo consisting, in part, of articles contraband of war, and that her destination was to ports in the West Indies, and from the last one, Havana, to Mobile, and thence back to England. The war between the United States and the rebel States, and the blockade of the southern ports, were well known in England when the vessel was fitted out and despatched. On her arrival at Havana it was reported that the blockade at New Orleans and Mobile had been raised by the United States. The report was not credited on the vessel, and it was determined to run her into Mobile. She attempted to make the entry secretly and covertly. When the blockading vessels lying off the port were discovered, the master destroyed his bills of lading, his private accounts, and the ship's entries.

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The Lizzie.

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The vessel was run in past the blockading fleet and Fort Morgan, and was there attacked by the United States forces and captured. She was anchored, and was unloading, when she was first attacked, and worked herself further in the harbor, but, being unable to get out of the reach of the attacking force, was abandoned by the master, the supercargo, and most of the crew, who went to Charleston. The master and two engineers embarked from Charleston for England in the steamer Memphis, and, on getting out of Charleston, that vessel also was captured and sent into this port. These officers were examined as witnesses in this suit, *in preparatorio*, on the arrival of the Memphis at New York. They made a clear and unreserved disclosure of the facts above recapitulated.

The case is free from all ambiguity. The voyage undertaken in England was with full knowledge that Mobile was under blockade. The vessel was, notwithstanding, despatched with her cargo, of which a valuable part was contraband of war, to convey it to the use of the enemy, and make her return directly to the owners in England.

A decree of condemnation and forfeiture of the vessel and cargo is ordered to be entered.

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THE SLOOP LIZZIE AND CARGO.

Vessel and cargo condemned for an attempt to violate the blockade.

Spoilation of papers by the master.

False destination on the vessel's papers.

(Before BETTS, J., October, 1862.)

BETTS, J.: This vessel and cargo were captured on the coast of North Carolina, by the United States steamer Penobscot, August 2, 1862. The vessel was at the time destroyed by the capturing forces, as unseaworthy, and the cargo was sent to this port for adjudication, and was here libelled September 20, 1862. On the return of the motion as duly served, and on public proclamation thereon made, the default of all persons interested in the cargo was entered. No person intervening for the property on the hearing, the proofs *in preparatorio*, with the papers found on the vessel, were submitted to the consideration of the court.

The vessel held a certificate of British registry, dated at Nassau, N. P., July 21, 1862, issued to George Campbell, of Scotland, merchant, which stated that she was a foreign vessel, built at New York in the year 1840. No bill of sale was attached to or accompanied the



registry. Shipping articles for a voyage from Nassau, N. P., to Baltimore, signed by a master, a mate, a cook, and two seamen, were taken from the vessel; there was no date to the shipping articles, nor was any place or time of their execution named therein. A clearance of the vessel from Nassau for Baltimore, July 21, 1862, was on board, and also a bill of lading of the cargo from the owner of the vessel to persons in Baltimore, dated July 19, 1862, without any signature. There was also a note, dated July 22, in the owner's name, to the consignees, addressed to them at Baltimore, advising them of the transmission of the articles named in the bill of lading.

The master, the mate, and one seaman, captured with the vessel, were examined as witnesses *in preparatorio*. The master says that the letter of instructions was given to him by Campbell, and that he, the witness, was directed to throw it overboard if captured, and that he did so when the capturing vessel came in sight. He also says that Campbell appointed him master of the vessel, and that he, the witness, supposed him to be her owner; that he knew that the southern ports were under blockade, and that that was well known in Nassau; that his vessel was out of a course for Baltimore, where, by her papers, she was bound, and was heading in towards the land, and that he intended to run her on shore.

The mate says that the vessel was captured about eight miles to the northward and eastward of Wilmington, in North Carolina; that the fact of the blockade of the coast had been known at Nassau for a long time, and was of general notoriety; that the vessel attempted to enter Wilmington; and that he heard the captain say that, on her last voyage, she sailed out of Wilmington into Nassau. The port was both times under blockade; and the seaman testifies that on the voyage the vessel was steering a course leading her to the port where she was captured.

It seems to me that the case, on the proofs, stands clear of all ambiguity as to the culpable purpose of the voyage and the actual attempt to carry out that intent. The voyage meant to be run was falsified on the papers. Papers tending to show the design of the voyage were destroyed. The vessel was detected in the effort to violate the blockade, and a decree of condemnation and forfeiture must be entered against vessel and cargo.

## THE SCHOONER BRITISH EMPIRE AND CARGO.

Vessel and cargo condemned for an attempt to violate the blockade.

(Before BETTS, J., October, 1862.)

BETTS, J.: This vessel and cargo were captured April 3, 1862, in Matanzas inlet, off St. Augustine, Florida, by the United States vessel-of-war Isaac Smith. Part of the cargo was appraised and appropriated to the use of the United States, to the value of \$3,510 73, and the residue was sent to this port for adjudication. On the return of the monition, the district attorney moved for and took a decree for the libellants, by default, no person intervening in the suit in behalf of the prize property.

The certificate of British registry shows that the vessel was built at Wilmington, Delaware, in 1855, and was registered at Nassau, N. P., October 19, 1861, to Thomas Lloyd, of that place. A shipping agreement for a voyage from Nassau to St. John, N. B., was found on board, executed by two seamen March 22, 1862; also an invoice of merchandise, dated Nassau, March 24, 1862, from Henry Adderly & Co., for St. John, N. B., on account and at the risk of J. B. Parsons, consigned to W. R. Wright, consisting of provisions, medicines, whiskey, and miscellaneous articles of merchandise; also a clearance from Nassau to St. John, N. B., March 22, 1862. No bill of sale is shown to have been given on the transfer of the vessel at Nassau.

Upon evidence that the members of the crew captured with the prize had subsequently escaped from the custody of the United States, and could not be produced in this district for examination before the prize commissioners, the court, on the application of the district attorney, allowed Lieutenant Nicholson, of the United States navy, to be examined on the standing interrogatories as a witness in the suit. This witness was present at the capture of the prize, which was made at Matanzas inlet, sixteen or eighteen miles south of St. Augustine, in Florida. The vessel was commanded by Captain Parsons, a citizen of the United States, resident in Florida, who was appointed master of the vessel by her American owner, Willie, who also resided in Florida. Four of the crew were Americans, from Jacksonville, Florida, and two were Englishmen shipped at Nassau. The vessel had no chart for any port north of Charleston, and had an insufficient supply of water for a voyage to St. John, N. B. Her outward voyage began at Jacksonville, with a cargo of turpentine, rosin, and lumber. She had been to Nassau, N. P. A portion of her return cargo, consisting of powder, was

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*The Troy.*

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upon her capture, discharged at Matanzas inlet, on the coast of Florida, and was there buried. Her last clearance was from Nassau. The master knew of the war, and of the blockade of the coast of Florida; the vessel, before her seizure, ran the blockade out of St. John's river, and forced her way back again to the place of capture. Two days after her capture she sank at her anchorage. Most of the facts testified to by Nicholson which were out of his presence or view were stated to him by the master and crew of the prize vessel whilst she and they were in his custody.

The proofs from the vessel's papers, her fitment, and the surrounding circumstances, conduce to show that she was despatched with a lading adapted to a traffic with enemy ports, such as, from a series of notorious transactions during the war, established by legal evidence in the prize courts of this country, and shown from the course of trade carried on between the port of Nassau and the rebel ports of the southern States, has been actively pursued since the existing blockades of the latter ports were known and enforced, and amount, in my judgment, to adequate evidence that this enterprise was entered into for the purpose of accomplishing (what the vessel was detected in doing) the evasion and violation of the blockade of the coast of Florida; and the circumstantial proofs conducing to that end justify and demand the condemnation and forfeiture of the vessel and cargo engaged therein. In addition to that, there is the proof that she transported, on this voyage from Nassau to Florida, articles contraband of war.

For the considerations suggested, independently of the confessions of the master and crew of the prize vessel, ample cause is shown for the decree which is ordered to be entered for the forfeiture, as prize, of both vessel and cargo.

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THE SCHOONER TROY AND CARGO.

Vessel and cargo condemned as enemy property, attempted to be used in trade by their owner for the benefit of the enemy, and arrested in the act of violating the blockade.

(Before BETTS, J., October, 1862.)

BETTS, J.: This schooner and cargo were seized August 13, 1862, by the United States steamer Kensington, in the Gulf of Mexico, off Sabine Pass, as prize. The crew escaped from the vessel after capture, and could not be sent in as witnesses. The vessel was found to be unseaworthy, and was taken to the Southwest Pass of the Mississippi

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The Troy.

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river, and there left by the captors in charge of the United States authorities. The cargo was shipped to this port for adjudication. On its arrival here, it being made to appear, by the deposition of Robert Barstow, an acting master's mate in the United States navy, that five persons had been found on board of the prize vessel at the time of her apprehension, that none of said persons were sent to this port with the prize property, nor was either of them then here, and that two of them were then in the State of Louisiana, and the other somewhere on the coast of Texas, the court, on motion of the United States attorney, ordered the testimony of Barstow to be taken before the prize commissioners *in preparatorio*, to be read on the trial, subject to all legal objections.

On the 1st of October, 1862, a libel was filed against the captured property. On the 21st of the same month the monition issued thereon was returned to the court by the marshal, with notice of the attachment of the cargo, and, on due proclamation, an order for judgment by default was rendered against all parties in interest not appearing in the suit. No one appearing as claimant in the cause, the United States attorney submitted to the court the preparatory proofs and papers, and prayed judgment.

The vessel was enrolled and registered in the confederate port of Sabine, Texas, July 3, 1862, to J. D. Kirkpatrick, on his oath that he was owner of her and a citizen of the Confederate States. A bill of sale, dated June 4, 1862, from William Nelson, of Beaumont, Texas, to the said J. D. Kirkpatrick, conveying to the latter the said vessel for the consideration of \$900, accompanies the register. There are, also, a manifest of the lading of sixty-five bales of cotton, given at the port of Sabine, August 4, 1862, for Belize or Campeachy; a letter from the owner, Kirkpatrick, dated July 19, 1862, stating the crew and the lading of the vessel, and naming her place of destination as to some port in Honduras bay or the West India islands for the sale of her cargo, and her return back to Sabine Pass, or near there, with goods necessary "for our government;" a rebel passport to the vessel, dated July 19, 1862, to leave Sabine Pass with her cargo; and a permission granted to Kirkpatrick and two others, June 13, 1862, by the provost marshal of Beaumont, Jefferson county, Texas, to visit Vermilion, but not to communicate any facts injurious to the Confederate States.

The only witness examined *in preparatorio* was Mr. Barstow. He proves the capture at the time and place above mentioned, and the

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The Ellis and Others.

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facts of the taking possession of the vessel and the transshipment of the cargo to this port, as before stated. Kirkpatrick claimed, on board of the vessel, at the time of her capture, that he owned the vessel and cargo. She was attempting to sail out of Sabine when captured. That port was then under blockade.

These facts are made to appear upon the vessel's papers: 1st, she was endeavoring to evade a blockaded port; 2d, both vessel and cargo were enemy property, water-borne; 3d, the cargo was destined to be traded off, in some foreign port, for goods necessary to the use of the rebel government; and, 4th, the testimony proves that the avowed and registered owner of the vessel and cargo was on the vessel when the capture was made and the attempt to violate the blockade was in actual execution. This was an act in face of the actual blockade, which is sufficient to stamp the endeavor with culpability, independent of the knowledge of the existence of the blockade by the owner of the prize property, to be implied from its notoriety and from his residence at the place blockaded.

A decree is accordingly rendered condemning the prize as enemy property, attempted to be used in trade by its owner for the benefit of the enemy, and arrested in the act of violating the blockade.

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THE STEAMBOAT ELLIS AND OTHER VESSELS.

An enemy vessel in the naval service of the enemy as a gunboat, condemned.  
Other vessels condemned as enemy property.

(Before BETTS, J., October, 1862.)

BETTS, J.: The first-named vessel, the Ellis, with her armament, was seized February 10, 1862, by the United States steamer Ceres, at the capture of Elizabeth City, in North Carolina, and was, directly thereafter, upon due appraisal, appropriated to the United States, and used in the conduct of the war, being appraised at the sum of \$18,000. A libel was filed in this court against the said vessel and armament September 20, 1862, and, to a monition issued thereon, the marshal made return, in October thereafter, "that the vessel and armament had been attached and delivered to the libellants, at the appraised valuation of \$18,000." On due proclamation made in court upon that return, no person appearing or intervening in the suit, the district attorney moved for and obtained a default against all persons having any interest in the property captured, and submitted to the consideration of

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The Ellis and Others.

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the court the preparatory proofs taken in the suit, and prayed a decree of condemnation and forfeiture of the said vessel and armament.

The testimony given by Commodore Rowan, who commanded the squadron by which the vessel was captured, proves that she was an armed vessel, mounting one piece of artillery (an eighty-pounder cannon) and a howitzer, and that, at the time of her capture, she was an enemy vessel-of-war, in the naval service of the enemy, as a gunboat. These facts are conclusive as to her character, and determine her confiscability.

A decree of condemnation and forfeiture of the vessel and her armament is, therefore, ordered.

On the same day, and at the same place, with the capture of the Ellis, a small schooner, owned by the enemy, (whose name is unknown,) laden with goods consisting of furniture, was captured by the United States steamer Commodore Perry, and was, on due appraisal at the sum of \$2,000, appropriated to the use of the United States, and employed to their use in conducting the war.

The evidence *in preparatorio* proves that this schooner was rebel property, and was, after capture, sunk, by order of the commander of the United States naval forces there at the time, as an obstruction at the mouth of the Chesapeake and Albemarle canal, as a warlike measure, and for the prevention of the navigation of that canal. Another enemy vessel, loaded with corn, was sunk at the same time and place by the said United States forces, and for the same purposes. These vessels were seized while in possession of the enemy.

The evidence sufficiently identifies the schooner appraised and taken to the use of the United States, and the proceeds of which are proceeded against in this suit, and entitles the libellants to a decree condemning and confiscating the same as lawful prize. There must, accordingly, be a decree for the above amount.

The remaining four vessels referred to, the steamer Albemarle, the steamer Old North State, the schooner Susan Anne Howard, and the sloop Jefferson Davis, were captured as prize on the 14th of March, 1862, by a United States steamer, at the time of the capture of Newbern, North Carolina.

The testimony and proceedings in respect to the above specified vessels are to the same effect as in the case of the unknown schooner, and the libellants are, therefore, entitled to a decree of condemnation and forfeiture of them accordingly.

## THE STEAMER ELIZABETH AND CARGO.

Intervention by a neutral consul for the alleged owners of vessel and cargo.

Oral exceptions, taken at the hearing, to the regularity and sufficiency of the proofs, on the ground that, of twenty persons composing the crew of the prize vessel, only the master and a cabin boy were produced as witnesses, overruled, on the ground that the claimant was guilty of laches in not making the objection at an earlier day.

The 12th prize rule of this court is express, that the captors must produce to the prize commissioner, to be examined as witnesses, three or four, if so many there be, of the company or persons who were captured with or who claim the captured property; and, in case the capture be a vessel, the master and mate, or supercargo, if brought in, must be two.

An omission to observe this rule is an irregularity, which, if properly and seasonably taken advantage of by a claimant, might lead to the rejection of the proofs offered, or compel the libellants to show a satisfactory excuse for the omission.

In this case the court, of its own motion, on seeing that the rule had not been complied with, suspended a final decree in the case, and gave leave to the libellants to submit proofs to the court within ten days, showing why the terms of the rule had not been observed.

Within the time so allowed satisfactory evidence was produced to the court that no malpractice had been intentionally allowed in the case, and that the failure to produce more than the two witnesses was the result of misapprehension or accident, and not of any purpose to disregard the rule.

Vessel and cargo condemned on these grounds:

1. The vessel was not *bona fide* a neutral vessel.
2. Her papers as to her destination were false.
3. She had on board articles contraband of war, intended for an enemy port, and on transportation by her to such port at the time of her arrest.
4. She was seized while attempting to violate a known blockade.

(Before BETTS, J., November, 1862.)

BETTS, J.: The libel in this case was filed July 7, 1862, alleging that the vessel, with her cargo, was captured, as lawful prize, by the United States steamer Keystone State, William E. Le Roy, of the United States navy, commanding, on the 29th day of May, 1862, on the Atlantic ocean, off Charleston harbor. The monition issued on the libel was made returnable, and was returned in court, on public proclamation, July 29 thereafter; and thereupon Pierrepont Edwards, the acting British consul for this port, intervened, by his proctor, for the interest of the owners of the steamer and cargo, and filed a claim in that character thereto, as being owned by British subjects out of the jurisdiction of this court, and subjoined to the claim his own test oath to such ownership, his knowledge, as stated by him, being acquired "from his position as present acting consul in the port of New York, and from conversation with the master and crew of the above steamer Elisabeth."

No other claim or answer was interposed in the case. The proctor and counsel for the claimant appeared on the trial, and, after the ship's papers and the preparatory proofs were heard, put in various points or objections against the condemnation of the vessel and cargo, and submitted the cause to the decision of the court thereupon, without oral

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The Elizabeth.

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argument. Written points were also submitted on the part of the libellants.

The vessel had a British certificate of registry, issued at Nassau, N. P., to John Holmes Hanna, of New Orleans, merchant, dated February 6, 1862. She is certified to have been built at Glasgow, July 29, 1859, and the registry states that her foreign name was "General Miramon, formerly Pagnes Coneo."

The vessel was cleared at Nassau. The clearance and shipping agreement with her crew were dated at that port in May, 1862, for St. John, New Brunswick. Her pilotage out was receipted at Nassau, May 24, and she went to sea the 25th, and was captured some thirty miles or less out from Charleston, May 29, at about 7 a. m. No log-book was produced with the papers, and no evidence of the course the vessel pursued from Nassau, or of the state of the weather or the speed of her progress. She was a steam propeller. As Nassau and Charleston are situated about two degrees of longitude and seven degrees of latitude apart, and the period occupied by the prize in making the transit from her place of departure (in latitude about 25° north, and longitude 77° west) to that of her arrest (in latitude about 32° north, and longitude 79° west) must, from the circumstances, have been less than four days, her course from the one to the other point must, obviously, have been as short in time and distance run as would be ordinarily practicable, and, being accomplished so promptly, could not be presumed, in the absence of all proofs to the contrary, to have been retarded by baffling or adverse weather, or by deviation from a direct track. On the contrary, her position west of the Gulf Stream, thirty or less miles out from Charleston, in five or six fathoms of water, would denote that her destination had been in search of a port immediately at command on the route she was running, rather than to St. John, in New Brunswick, many degrees of longitude east and latitude north of the place of her arrest. These palpable circumstances bear strongly against the integrity of the representation upon the clearance and shipping agreement, and in the testimony of the master, that the voyage was destined for St. John, New Brunswick, and not to Charleston; and that distrust will not be found removed or diminished by the tenor of the proofs *in preparatorio*.

The crew consisted of twenty-one persons, including the master, two mates, two engineers, a steward, a cook, a cabin boy, five seamen, and five or six negroes. Of this number only the master and the cabin boy were produced and offered as witnesses before the prize commis-



sioners for examination. No reason was assigned to this court at the hearing for such limitation of the number of witnesses examined. The counsel for the claimants, on the argument, excepted orally to the regularity and sufficiency of the proofs so returned, and filed his exception in writing, as a point of defence in law to the suit. The existing 12th prize rule of this court (and the standing rule, from the earliest compilation of the rules, has been substantially the same) is direct and positive, that the captor shall produce to one of the commissioners three or four, if so many there be, of the company or persons who were captured with or who claim the captured property. And in case the capture be a vessel, the master and mate or supercargo, if brought in, must be two, in order that they may be examined by the commissioner *in preparatorio*. The rule of this court corresponds, in substance, with the practice of the other district courts of the United States, with that of the continental government during the revolutionary war, (5 Wheat., App., 118, art. 6.) and with that of the Supreme Court, (1 Wheat., App., 496.) The English and our continental practice is founded upon the like principle, (Godolphin Ad. Ins., 25, 26; The Dame Catherine de Workeem, 1 Hay & Mar., 244,) though it does not appear, with other jurisdictions, to rest in general rules, but to be governed by specific instructions of the judge, and, at his discretion, limited to one or more witnesses. (Marriott's Formulary, 32.) During the revolutionary war instructions were given by Congress to cruisers to bring in one or more witnesses from the prize for examination, (5 Wheat., App., 118;) and by the President, to private armed vessels, to bring in the master and one or more of the principal persons. (2 Wheat., App., 81, art. 4.)

The omission on the part of the captors to observe the requirements of the rule in this respect is an irregularity which, if properly taken advantage of by claimants regularly intervening in the suit, might lead to the rejection of the proofs offered in that condition, or compel the libellants to show adequate cause for the omission to produce and have examined before the prize commissioners the required number of witnesses out of those found on the prize at the time of its seizure. The rule is not one of positive law, constituting a prerequisite to a right to a condemnation on the part of the libellants, and is, therefore, subject to explanation or excuse conformably to the substantial rights and equities between the parties litigant.

The capture was made May 29, 1862. The prize was delivered to the commissioners of prize in this district, as appears by their register,

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The Elisabeth.

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on the 4th of June thereafter, and the examination *in preparatorio* of the two witnesses whose testimony was produced on the final hearing was taken and certified the next day, June 5. The libel was filed July 7, 1862. No reason is assigned for that delay; but it is a probable inference that a pause in the proceedings occurred on account of the small proportion of the ship's crew first produced for examination, and to await the presentation of others subsequently. Nothing appears upon the pleadings or papers introduced by either party in relation to the subject; and, on the 29th of July, the British vice-consul for this port intervened and filed the claim in behalf of British subjects, before referred to, as owners of the prize property at the time of such appearance, and persons out of the jurisdiction of the court. He was a competent party to that end. (1 Kent's Comm., 43; The Bello Corrunes, 6 Wheat., 152.) An affidavit of the intervenor, appended to the claim on his test oath thereto, asserts the belief of the deponent in the allegations of the claim, and that he acquired his knowledge of these matters from his position as acting consul in the port of New York, and from conversations with the master and crew of the above steamer Elisabeth.

The parties are authorized by the prize rules (Rule 13) to attend personally, or by their agents, the examination of witnesses before the commissioners; and the presumption is, accordingly, forcible that it was well known, when the claim was interposed and filed, who of the crew had been examined as witnesses, and what testimony had been given, as well as the reason why no greater number were produced. No other party has supplanted the official intervenor, or assumed to take charge of the defence; and the exception he raises to the alleged irregularity in practice, in giving in the proofs, could have been as well known to him or his proctor at the inception of the suit or the presentation of his claim, as at the time of the final hearing on the issue. And there is no intimation in any juridical recognition of his official powers which indicates that they exceed the legal authority of the principals he may represent. No privilege or immunity in respect to questions of irregular practice on the part of the libellants in the prize commissioner's office, or otherwise, is reserved to a consular representative in court, in managing a defence to the action, which could not be exercised by the owners of the property seized. The defectiveness of the proceedings complained of must, in contemplation of law, have been known to him when the evidence was given, as fully as at the present term of the court, when the exception is first suggested. It

was, therefore, palpable laches to withhold the objection to the mode of taking the proofs until the hearing on the merits in court, and the motion to exclude or disregard the depositions because additional portions of the crew were not added must be denied. It is a principle governing the proceedings of all judicial tribunals, that the neglect by a litigant party to bring forward at the proper period objections touching the form and regularity of the acts of his opponent in conducting his cause in court shall be deemed to be a waiver of such objections, or equivalent to an admission that, if they had been made known, the other side could have satisfactorily removed them. (Graham's Prac., 566; Tidd's Prac., 533; Rowan v. Lytle, 4 Cow., 91; Jones v. Dunning *et al.*, 2 Johns. Ca., 74.)

But it appearing upon the depositions read on the hearing that a large number of persons, being the crew and passengers on the vessel at the time of her capture, and captured with her, have not been examined as witnesses in the suit, and no excuse being furnished for the omission, the court will suspend a final decree in the case until the libellants furnish satisfactory evidence to the court, by depositions filed within ten days after this order, that the omission to examine the number of witnesses required by the standing rule of the court arose from reasonable and justifiable cause, and was not owing to any culpable or improper purpose on the part of the prosecution. This order is made that the court may be well satisfied that all the proceedings have been fairly conducted in pursuing the condemnation of the prize, and not because of any regular or lawful defence interposed in the suit, which renders the proceeding therein other than one of entire default and absence of defence in the suit on the part of the owners of the property seized.

November 12.—Interlocutory order. An objection being taken in court by the proctor of the official claimant, on the final hearing of this cause, that the number of witnesses required by the stated rules of the court to be examined in prize suits were not produced by the libellants, and examined *in preparatorio* by the prize commissioners, although it is considered by the court that the objection is not available in law to the claimant, yet the court, in protection and enforcement of its standing rules, and in support of the ends of public justice, will, *ex suo motu*, notice an omission of its officers to observe and comply with those rules: therefore, it is ordered that further proceedings in this cause, upon the proofs now before the court, and the motion for a decree of condemnation and forfeiture of the property under arrest, be suspended

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for ten days after notice of this order to the district attorney and the proctor of the captors, with leave to the libellants to submit, within that time, proofs to the court showing why the rules of court in that respect have not been complied with in this suit.

*November 17.*—Affidavits presented this day by the assistant district attorney and the counsel for the captors in the cause, with the evidence *in preparatorio*, show that, on the capture of the prize, her crew, except the two witnesses examined and two or three colored men, were separated from the prize vessel because of the largeness of their numbers and the smallness of the vessel, and were transferred to the public ship, the *Bienville*, and were brought by that ship into the port of Philadelphia; that part of the crew have never been transmitted to this port, and, it is believed, were allowed to disperse; that the negroes accompanying the prize were not sent in for examination, because it was considered they were stupid and unintelligent persons; that the master of the vessel, and the cabin boy, a young man nineteen years of age, were produced for examination; and that the other portions of the captured crew had, as is supposed, been discharged from the *Bienville*, at Philadelphia, as not needed for witnesses. This evidence satisfies the court that no malpractice has intentionally been allowed in the case, and that the failure to produce other witnesses from the prize crew is the result of misapprehension or accident, and not of any purpose to disregard a full observance of the rule of court.

The libellants insist, upon the case as it now stands, that the facts presented in the ship's papers and the preparatory proofs place the vessel and her cargo in the class of those adventures so common and so frequently made the subject of adjudication in this court during this war, in which vessels and cargoes assume to be engaged in a neutral trade to or from the port of Nassau, but are, in reality, covered with proofs that the purpose and effort of the enterprise is to carry cargoes into, or to bring them from, the blockaded ports of the adjacent seceded States, in violation of the blockade, and in fraud of the rights of the United States under the law of nations.

In addition to the pleadings and evidence previously before the court, a paper log-book of this last voyage of the vessel is now laid before the court by the counsel for the claimants, with the assent of the counsel for the libellants, as being one which was left in his charge by the master of the prize when she arrived in this port, and was accidentally not sent with the ship's papers to the prize commissioners. This document changes the evidence already in the case only in fixing

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The Elizabeth.

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with more precision the times and places of the beginning and ending of the voyage. Her departure was at latitude  $27^{\circ} 55'$  north, and her arrest at latitude  $32^{\circ} 19'$  north. She left Nassau, Sunday, May 25, 1862, towards St. John, N. B. Royal Cay was, at 4 p. m., south-southeast, ten miles distant. The vessel was brought to and arrested the Thursday after at  $4\frac{1}{2}$  a. m. On Wednesday, the 28th, the log notices "coal getting short, and water likewise."

The argument is still maintained for the libellants—

1. That the vessel is enemy property ;
2. That the cargo is contraband of war ;
3. That the papers are simulated and false as to the real destination of the vessel ; that the voyage was undertaken and prosecuted with the intent to run into Charleston, and that the vessel was captured while making that attempt.

The claimant denies these positions, and urges—

1. That the evidence required by the rules of court has not been furnished by the libellants ;
2. That the evidence of the cabin boy is inadequate proof against the vessel ;
3. That a neutral ship can carry any description of cargo ;
4. That the residence in an enemy port of the neutral owner did not render the vessel enemy property at the time of her seizure, May 29, New Orleans having been opened to general commerce, by proclamation, May 12, 1862.

The vessel was owned in New Orleans, by Hanna, when the master was appointed to her. He was put on board of her by the owner at Mobile, in December, 1861. The crew were reshipped by the master for the last voyage in May last. The vessel carried two small brass guns forward. The master says that the vessel, on the voyage on which she was captured, was bound from Nassau to St. John, N. B., and back to Nassau. She carried a full cargo, consisting of castor oil, kerosene oil, tin, lead, rifles, sabre blades, saltpetre, dry goods, and casks of some kind of hardware. She had on board goods contraband of war. The vessel went, in December, 1861, from New Orleans to Mobile; thence, with a cargo of spirits of turpentine, to Havana; thence, with another cargo, to Nassau; and thence to New Orleans, where she arrived February 20, last. Thence she carried a full cargo of cotton to Havana, and there took on board a new cargo, and proceeded to Nassau, where she received part of a new cargo, and started on the voyage on which she was captured. When the vessel

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went from Havana and Nassau on the previous voyage, she cleared for Matamoros and went to New Orleans. The cargo captured was shipped and claimed by Henry Adderly & Co., of Nassau. The master says that he does not know who were the consignees of the cargo, or that Adderly & Co. had any interest in it; that he had heard that Charleston and the southern Confederate States were under blockade, and that he believes that Charleston was actually blockaded at the time of the capture of this vessel, as a number of blockading vessels were lying there. When the prize discovered the capturing vessel, she was about four miles off, and the prize altered her course. When the first gun was fired by the capturing vessel, the prize was then heading not towards Charleston, but outward and towards the Gulf Stream, being about twenty miles west of the western edge of the Gulf Stream. The Gulf Stream would be the direct course from Nassau to St. John. The prize was about two points off that course when taken, and was then endeavoring to get back to it. The cabin boy testifies that the vessel was captured in about three fathoms of water, because she was charged with attempting to run into Charleston; that he resides at Nassau with his father, an Englishman, and supposes that Adderly & Co. owned the vessel, because they advanced; that he was shipped at Nassau, with the rest of the crew, at a shipping office there; that the vessel first sailed from Nassau to Havana, with a small cargo of coal for the steamer's use, and then back to Nassau; from which place he supposes the vessel intended to run the blockade of Charleston, although, by the shipping articles, she was destined to New Brunswick; because it was generally so understood by the crew, just after leaving Nassau, because the vessel had arms and warlike materials on board, and because she went so close to Charleston; and that the vessel, when she ran over to Havana from Nassau, took nothing but fuel for her own use, and brought back several square boxes (the contents of which he did not know) to Nassau, and then immediately had loaded on board, without landing the boxes, arms, munitions of war, and other merchandise.

The evidence, from the preparatory examination, that the prize ran from Nassau to Havana for a portion of the cargo on this her last voyage, and returned directly thence to Nassau, and there, without unloading that portion on her return, took in, at the latter port, the residue of her lading, gives great significancy to the observation in the log-book, before quoted, as, unless the voyage then proposed to be continued was to be a very short one, it is incredible that the steamer

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The Joseph H. Toone.

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should be sent to sea with water and coal not sufficient to supply her for four days. Some part of this short period, as also appears from the log, was run under sails only.

Without dilating upon the facts thus placed before the court, I am clear in the conclusion that this vessel had not acquired a *bona fide* neutral character at the time her last voyage was undertaken; that St. John, N. B., was not the true destination of her voyage from Nassau, whence she last sailed; that her papers in that respect are simulated and false; that she had on board articles contraband of war, intended for an enemy port; that she was arrested in attempting to carry such articles to such port; that her owner, her master, and the owners of her cargo well knew of the blockade of Charleston, and that it was efficiently maintained, and, under that knowledge, endeavored to break the blockade; and that the vessel and cargo were seized in the attempt to carry out that intention.

A decree of condemnation and forfeiture of both vessel and cargo is ordered to be carried into effect.\*

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THE SCHOONER JOSEPH H. TOONE.

In this case the court had condemned the cargo, but had withheld condemnation of the vessel, on the ground that no monition had been returned against her. Afterwards, the court, on the application of the libellants, made an order, under the 44th admiralty rule of the Supreme Court, no notice by monition having been given to the owner of the vessel, and she not being in port, that the monition be served on the proctor for the owner. It having been so served, the proctor appeared in court and made, under oath, an exception in writing on behalf of the owner against the requirements of the monition, the district attorney at the same time moving for a decree of condemnation against the vessel for want of an answer to the libel. *Held*, that the proceedings were regular, and that the vessel must be condemned.

(Before BETTS, J., November, 1862.)

BETTS, J.: The proceedings on the institution of this suit, and the construction of the pleadings, were noticed in the decision of the court in October term past, *ante* p. 223.

On the 10th day of November instant the district attorney applied for and obtained an order from the court for a monition to attach the vessel by delivering a copy of said monition to Charles Edwards, esq., proctor for the claimants in the suit, in pursuance of the Supreme Court rule 44, in admiralty. The monition was returned in court by the marshal on its return day, "Served by delivery that day to the said proctor." Thereupon the district attorney moved a decree of

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\* This decree was affirmed, on appeal, by the circuit court, July 17, 1863.

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The Joseph H. Toone.

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condemnation against the vessel, for default of an answer to the libel in that respect. On the 18th instant Mr. Edwards appeared in court, and made, under oath, "*an exception, objection, and protest*, in writing, on behalf of Aymar, the owner of the vessel, and as his advocate and proctor, against the requirements of such monition," setting forth in the instrument, in detail, the facts and grounds upon which it was founded, and praying and claiming that it be filed in the above suit.

The court cannot understand this paper as a defence to the motion made by the district attorney, as it is specifically exceptive, and in bar to the competency of the court to act on the subject-matter of the additional process and monition. The appearance is not *sub modo* to the deficiency and irregularity of the proceedings against the vessel, and the inadequacy of evidence to convict her. That would be a defence in chief on the merits—the result and consequence which the protest seeks to prevent or render nugatory. The court, in its sentence against the cargo, expressly forbore to act on the allegations in the libel against the vessel, on the ground that no monition had been returned against her. If it had been understood that the owner had appeared by a proctor in defence of the vessel, such appearance would undoubtedly have cured the want of a monition or due notice to the vessel, and would have stood as such notice to the owner. (*Penhallow v. Doane*, 3 Dall., 54; *Hills v. Ross*, 3 Dall., 331.)

The 44th admiralty rule of the Supreme Court meets the case where no notice by monition has been given to the owner of property proceeded against as prize and not in port, and authorizes the service of the monition on the owner personally, or his agent or proctor residing in the district.

The latter course has been pursued in the present instance. If the appearance of the proctor for the owner of the vessel was not absolute at first, so as to render the proceedings against her perfect without direct notice to him, then the service of the monition personally on him on the day of its return is adequate notice to bind his principal as to all subsequent steps regularly taken by the libellants in the cause. They are, accordingly, entitled to a decree of condemnation of the vessel by default, according to their prayer.

A decree will be entered against the vessel, confirming her appropriation to the use of the government on the appraisal of value made of her at the time of her seizure.



## THE STEAMER MEMPHIS AND CARGO.

Vessel and cargo condemned for an attempt to violate the blockade.

A seizure of a vessel for the violation of a blockade is lawful, if made by a national vessel, though not made by a vessel forming a part of the blockading force.

A vessel guilty of an unlawful trade with the enemy is liable to capture for the offence at any time during the voyage in which the offence is committed.

(Before BETTS, J., November, 1862.)

BETTS, J.: The allegation in the libel, filed August 8, 1862, is, that this vessel and cargo were captured as lawful prize July 31, 1862, off Charleston harbor, South Carolina, by the United States steamship Magnolia, and sent to this port for adjudication. Thomas S. Begbie and Peter Denny intervene as claimants of the vessel, alleging that they are British subjects and owners of the vessel, which is a British vessel, and denying that she is lawful prize. The test oath of ownership is made by Donald Cruikshank, her master. Theodore Andrews, also a British subject, claims the cargo, and denies that it was lawful prize at the time of seizure. He makes the test oath of ownership. Both claims allege that the Magnolia, when she made the seizure, was not a vessel employed in enforcing the blockade of Charleston, but was casually passing on the ocean eighty-five miles from that place. This point was also made on the argument. Both of the above claims were filed September 2, 1862, by the same proctor.

The vessel, by due course of interlocutory proceedings, was appraised and delivered to the government for the use of the United States, and was put into the public service before the final hearing of the cause, and public sale was also made of the cargo, as being perishable, and perishing in fact.

The evidence is ample and unquestioned that the vessel and cargo were, at the time of seizure, neutral property. The libellants claim that both are forfeitable, because the vessel had entered the port of Charleston on the preceding voyage, carrying with her articles contraband of war, and also in evasion of the blockade, well knowing at the time that the port was under actual blockade by the forces of the United States; and that the cargo seized on her was laden on board at Charleston, and brought out with intent to violate the blockade of that port then existing.

The testimony is clear, and was unquestioned on the trial, that the cargo on the outward voyage, landed at Charleston, consisted largely of articles contraband of war, and that the master and owners of

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The Memphis.

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the vessel and cargo well knew that the government of the United States claimed that the port of Charleston had been since May, 1861, held in a state of efficient blockade, and that an adequate force was stationed there to maintain the blockade. The documentary, notorious, and judicial evidence, connected with the points of law made by the defence, has been adverted to and detailed so repeatedly on those heads during the progress of this war, in the disposition of prize suits contested in the courts of the United States on captures made during the war, that it is superfluous to make a further recapitulation of these points until a judgment of the Supreme Court of the United States shall indicate that they are unsound and not warranted by law. I accordingly rule that the testimony taken *in preparatorio* in this suit satisfactorily establishes that the owners of the vessel and of her cargo had full notice and ample knowledge, when she was fitted out in England and sailed therefrom on this voyage, that a state of war existed between the United States and the seceded States; that Charleston was under an efficient blockade by the United States; and that the master and owners of the vessel on her outward and return voyage intended that the ingress and egress of the vessel to and from that port should be effected by an evasion of its blockade.

The point taken by the claimants, that the capture in this case is invalid because not made by a vessel actually stationed at the blockaded port, is not supported by any authority produced, nor does it comport with any reason upholding the authority of a belligerent to repress infractions of a blockade. The guilty vessel does not purge her offence by a successful act of fraud or deceit in preventing an arrest by the force supporting the blockade. Her capture is lawful, although the blockading force may be entirely absent from its post when the culpable act is committed. (1 Kent's Comm., 145.) Any public vessel of the belligerent whose rights are violated may be the agent or minister to apprehend the offender, though, by dexterity or superior speed, the culpable actor may escape arrest at the time or place of the perpetration of the wrong. The only question which seems to be allowed in that respect is, whether the capturing vessel possessed the attributes of a national ship, so as to be entitled to participate in prize proceeds. (The Charlotte, 5 Ch. Rob., 280; The Melomane, Id., 50.) Yet, aside from any right to a participation in the prize proceeds, the power to capture an enemy vessel by any national force at sea seems irrefragable, whether the liability of the vessel attached arises from her positive hostile character, or from her viola-

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The Alliance.

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tion of the belligerent rights of the captor. (The Charlotte, 1 Dods, 220; The Donna Barbara, 2 Hagg., 373.) The vessel and cargo in this case were captured *in flagrante delicto*; and after the undisguised avowal by the officers, on their examination *in preparatorio*, and the open contract on the shipping articles, all recognizing the culpability of both voyages, with the papers on board verifying the reward paid to the crew for accomplishing the illicit enterprise, it is not without surprise that the court has witnessed a formal issue made by the claimants on the justness of the seizure of the vessel and cargo. The legal point which has been pertinaciously invoked by the defence, that the United States public ship which arrested the culprit, not being stationed off the port as one of the blocking squadron, had no authority to make the capture, has no foundation in American or English prize law. A vessel guilty of an unlawful trade with the enemy is liable to capture for the offence at any time during the voyage in which the offence is committed. (Halleck on International Law, chapter 21, section 12.)

Decree of condemnation and forfeiture of the vessel and cargo ordered.\*

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THE SHIP ALLIANCE AND CARGO.

Vessel and cargo seized in the harbor of Beaufort, N. C., on its capture; condemned for these reasons:

1. For violating the blockade in entering Beaufort.
2. For taking on board there an enemy clearance and a cargo, with intent to evade the blockade in coming out, and attempting to come out.
3. For carrying into Beaufort a large supply of military equipments.

The illegality of sailing under an enemy license is legal cause for the forfeiture of a neutral vessel.

(Before BETTS, J., December, 1862.)

BETTS, J.: The vessel and cargo seized in this case were libelled May 17, 1862. A claim in the name of the registered owners, with a test oath made thereto, was filed on the 17th of June thereafter. The defence set up in the claim is an alleged neutral ownership of the vessel and cargo by the claimants, and a denial that the seizure was a lawful capture.

The facts gathered from the ship's papers and the preparatory proofs show that the vessel was of American build, and was conveyed to and registered in the names of the claimants, British subjects, at Liverpool, February 11, 1861. The vendors to the British owners

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\* This decree was affirmed, on appeal, by the circuit court, July 17, 1863.

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The Alliance.

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were Ferguson & Co., a mercantile firm resident in Charleston, S. C., and the vessel had, previous to this sale, been employed by that house in trade to and from Charleston at different periods. One of the members of the firm of Forbes & Co. was also a member of the firm in Liverpool, who acted as agents of the house in Charleston in making the transfer of the vessel to the claimants, and the claimants had been previously clerks in the employ of the vendors; but the sale of the vessel preceded the existing war so long a time as not to expose it *per se* to the presumption claimed by the libellants, that it was made colorably, and in fraud of the belligerent rights of the United States.

The voyage on which the Alliance was seized commenced at St. John, New Brunswick, in August, 1861. Her destination was first to Beaufort, North Carolina, and thence to Liverpool, England. The vessel arrived at Beaufort laden with a miscellaneous cargo, consisting of quantities of tins, various denominations of iron, mackerel, castor oil, two trunks of percussion caps, (about 200,000,) fish, quicksilver, &c., entered that port, and discharged there in the latter part of August, 1861. She took on board a cargo of cotton, turpentine, and other produce of the country, in return, destined for Liverpool, to the owners of the vessel. The master testifies that nothing contraband was on board on the voyage. The vessel cleared at Beaufort, for Liverpool, in September, 1861, but was arrested before her departure. A person from Nassau joined the ship at St. John, as supercargo, and delivered and disposed of the cargo at Beaufort, and did not rejoin the vessel afterwards. The master says that he believed that the cargo taken on board at Beaufort was destined for the owners of the ship, and would have been their property on its arrival at Liverpool. The ship was seized May 2, 1862, in the harbor of Beaufort, North Carolina, by the United States naval forces, after the capture of the place by the army of the United States. The master knew of the war when he sailed for Beaufort, and that Charleston and the southern coast was under blockade. He says he did not know, until the 6th or 7th of September thereafter, that Beaufort was blockaded. The cargo was taken on board at Beaufort, for Liverpool, on the 14th of September, and the vessel took on board, during the same month, at Beaufort, a clearance, export certificates, and a bill of health, from the authority of the secession government, and was moored in that port, ready to sail, and having attempted to do so, and being detained only by the weather or the blockading squadron. On the 27th of May,

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The Alliance.

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1861, a boarding officer of the United States, off-Charleston harbor, had indorsed a warning on the ship's papers, that the port of Charleston was under blockade, and the notice, it is testified, might have included all the ports of the southern States. The notice was left in England.

Various facts transpire on the proofs unmistakably condemnatory of the vessel and cargo. First. Prior to this voyage, she had been warned and turned away from the port of Charleston, May 27, 1861, by a United States ship-of-war. The warning was indorsed on her papers and entered in her log, and gave her notice that the coast south of Maryland was under blockade. Second. Notwithstanding such notice, she entered the port of Beaufort, North Carolina, on the 22d of August, 1861, on a pretended voyage from St. John, New Brunswick, to Havana, with a quantity of articles contraband of war on board. Third. She was reladen, at Beaufort, with a full cargo of the produce of that section of the country, and attempted, unsuccessfully, to get out of port with such cargo; and when she was afterwards captured there, she had on board a letter from the British consul at Charleston, dated September 11, 1861, to the British secretary of foreign affairs, apprising that officer that the vessel and cargo were destined to Liverpool, England, and also enemy documents authenticating her right to leave the port, &c. The illegality of sailing under an enemy license is legal cause for the forfeiture of a neutral vessel. (*The Julia*, 8 Cranch, 181; *The Ariadne*, 2 Wheat., 143, and notes in Appendix.)

The violation of the blockade of Beaufort, in entering that port, the taking on board therein an enemy clearance and a cargo, with intent therewith to evade the blockade, and the attempting to carry that design into execution, with the higher and more injurious act of positive hostility against the government of the United States, in carrying into port a large supply of military equipments, afford abundant grounds for the condemnation of the vessel and cargo as prize of war, without adverting to various other facts disclosed in the evidence.

Decree of condemnation and forfeiture of vessel and cargo adjudged.\*

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\* This decree was, on appeal, and on further proofs, reversed by the circuit court, January 8, 1864.

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The Lizzie Weston.

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## THE SCHOONER LIZZIE WESTON AND CARGO.

This court, as a prize court, has no power to open a decree after the expiration of the term or session in which it was rendered.

(Before BETTS, J., December, 1862.)

BETTS, J.: A final decree was entered in this suit in September term last. On the 15th and 17th of November the counsel for one of the claimants moved the court, on affidavits alleging circumstances of equity in behalf of such claimants, to open that decree and award a compensation of about \$12,000 to the claimant intervening, because of supposed interests of his affected by the decree. The motion was opposed by the libellants.

The general rule of practice clearly prevailing in courts of law and admiralty is, that the power of the court over a judgment terminates with the sitting of the court which renders the judgment. The sitting is not necessarily limited to the particular day on which the judgment is pronounced, but includes and is restricted to the term or session of the court in which it is rendered. (*Hudson v. Guestier*, 7 Cranch, 1; *Whiting v. Bank of the United States*, 13 Pet., 13; *Washington Bridge Company v. Stewart*, 3 How., 424; *Bank of the United States v. Moss*, 6 How., 31; *The Martha*, 1 Blatch. & Howl., 171; *The United States v. The Brig Glamorgan*, 2 Curtis C. C. R., 236.) An entire term (October) having, in this case, intervened after the final decree rendered in the suit, the court has no authority, on the application of either party, to reopen that decree at this time and make a new disposition of the subject.

The general practice of the prize court conforms to that of the admiralty on its instance side, (2 U. S. Stat. at Large, 761, § 6,) and thus corresponds in essential features with that of the high court of admiralty of England. (Supreme Court Rule No. 7, of August 8, 1791; 1 How. R., xxiv; *Jennings v. Carson*, 4 Cranch, 2.) The instances which may occur in equity courts in England of a deviation thereafter from the foregoing rule do not affect its permanency and effect in the courts of admiralty within the United States.

The motion to open the decree for further proceedings is, therefore denied.

## THE SHIP GONDAR AND CARGO.

An objection that this vessel, seized by naval forces in the harbor of Beaufort, N. C., after its capture, and while that place was in custody of the army of the United States, was not subject to capture solely by the naval forces, overruled.

If the vessel and cargo are subject to condemnation, the claimants cannot contest in a prize court the competency of the libellants alone to control the proceeds of the forfeiture.

Vessel and cargo condemned—

1. For having violated the blockade in entering Beaufort.
2. For shipping there a new cargo, with intent to violate the blockade in coming out.
3. For taking an export license and clearance from the enemy at Beaufort.
4. For a false representation on the vessel's papers as to who was master of the vessel.

(Before BETTS, J., December, 1862.)

BETTS, J.: This case, in most of its main features, coincides with that of the *United States v. The ship Alliance* and cargo, decided in this court a few days since. Parts of the testimony in each case have been invoked by the libellants into the other. Both vessels were of American build, were the property of the same owners in this country, and were transferred at one time to the same English claimants, by proceedings exactly similar; and the two vessels went into the port of Beaufort, one on the 22d and the other on the 28th of August, 1861, both having knowledge of the blockade existing at the time, and were there loaded with cargoes and documented for departure in substantially the same manner. Many other circumstances detailed in the proofs in the two cases are omitted in this concise notice of the grounds of decision, which may be more specially spread out in an opinion *in extenso*, should the cases be removed on appeal.

The shipping articles in this case, dated at Liverpool, July 5, 1861, contract for a voyage from Liverpool to Nassau, and any ports and places in the United States, and back to a port of discharge in England. No sea-log was found on board at the capture. The official log-book, signed by the master, enters the commencement of the voyage as being July 5, 1861, "to Nassau, N. P., and one port in the United States, and back to Liverpool." It states that the vessel arrived at Beaufort August 28, and was ready for sea September 14, 1861. The master, mate and one seaman were examined on interrogatories.

The vessel was captured at anchor in Beaufort harbor, May 2, 1862, by the United States vessel-of-war *Gemsbok*, various other war vessels being present. The vessel was laden at Liverpool with 4,300 sacks of salt and 112 tons of iron, which were discharged in Beaufort harbor, and she was there reladen with a cargo of spirits of turpentine, rosin and cotton, all of which was taken on board prior to September 14,

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The Gondar.

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1861. She was ready for sea on that day. The cargo was shipped by Dill, a resident of that port, for the owners of the vessel.

The master, Jennings, knew that the port was blockaded; but he asserts that the first time he saw a blockading vessel there was on the 6th or 7th of September, 1861, and that he saw none off the port when the ship entered it. Most of the return cargo was taken on board after the blockading vessel appeared off the harbor. The present master, Jennings, was put in command of the ship at Beaufort, after her former master, Gooding, left her. Whilst she lay at that port, the confederate steamship Nashville came in and went out; and a day or two before that vessel went out, the former master, Gooding, put the former mate, Jennings, in command of the Gondar. Jennings says it was rumored that Gooding was transferred to the command of the Nashville and went to sea in her, and that he had not seen him since. The same witness says that the Gondar was in Charleston harbor at the time of the bombardment of Fort Sumter, and returned thence to Liverpool, from which port she proceeded on the voyage on which she was arrested, and entered the port of Beaufort in August, 1861, and was arrested there.

The presumption, from the facts, is exceedingly cogent, that the voyage was set on foot and prosecuted to its termination with full knowledge, by the master and owners of the vessel and cargo, that the port of Beaufort was at the time in a state of blockade, and with intent to evade such blockade. No proof is found in the ship's papers, or in the preparatory examinations, repelling or displacing such presumption. The defence is placed essentially upon the legal immunity of neutral ships from liability to capture because of acts done in a prior voyage; and upon the further fact, that, at the time of the seizure of this vessel, the enemy port of Beaufort and its appendant station, Morehead City, were held in the military custody of the army of the United States, and, for that cause, she, as a neutral vessel, was not subject to capture solely by the naval forces of the government.

It is not shown that there was any co-operation between the land and naval forces in the arrest of the vessel or cargo on this occasion, nor any concert even in the proceedings leading to that end, nor does the army make claim to any interest in the capture. (Wheat. on Captures, 288; The Dordrecht, 2 Ch. Rob., 55.) If the vessel and cargo were *in delicto* and are subject to condemnation, the claimants have no power to contest in the prize court the competency of the libellants alone to control the proceeds of the forfeiture.



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The Gondar.

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Beaufort or Morehead City was, undoubtedly, a neutral port as to the vessel and cargo, when they entered it. It was, however, an enemy port to the United States, and the acts of the vessel and cargo in going to the port, and whilst in it, were hostile to the United States, and impressed upon them the character of enemy property, because the voyage was undertaken with intent to evade the blockade of the port in entering it, and the vessel obtained therein the cargo arrested on board, with the intention of running the blockade in exporting such cargo, which would render that, also, a hostile act. Under the uniform course of decisions in the courts of the United States during the present war, both of these acts of the vessel were violations of the law of nations, and subject the vessel and cargo seized to forfeiture, she having sought and entered the port of Beaufort knowing it to be blockaded, and having there acquired a new cargo, intending to violate the blockade in exporting it. (Upton's Maritime Warfare and Prize, 2d ed., 309 *et seq.*)

The ship's papers are also found to contain that official recognition of, and affinity with, the enemy, which imports a hostile association with it, adopting and submitting to its authority as an independent and lawful power. As in the previous case of the *Alliance*, the vessel shielded herself by a confederate clearance and export license. It has frequently been adverted to, in the course of decisions by this court, that it is legal cause of forfeiture for a neutral vessel to clothe herself in time of war with protective documents obtained from the enemy. In the present instance the Gondar had on board a confederate export license and clearance, which are evidence of a criminal adhesion to the rebel government. (*The Julia*, 8 Cranch, 181; *The Ariadne*, 2 Wheat., 143, and notes in Appendix.)

There was, moreover, a false representation on the ship's papers, Gooding having signed and sworn to the manifest of the cargo September 14, as master of the vessel, and having taken out a certificate of the clearance of the vessel as master thereof, dated the same day, duly executed by J. F. Bell, as collector of that port, when it is proved that he surrendered the command of the vessel to Jennings, the first mate, and appointed him master, and went off in the confederate steamer Nashville early in March previous.

I find in these various particulars ample cause for the condemnation of the vessel and cargo captured, and direct a decree to be entered accordingly.\*

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\* This decree was, on appeal, and on further proofs, reversed by the circuit court, January 8 1864.

## THE STEAMER PATRAS AND CARGO.

Vessel and cargo condemned for an attempt to violate the blockade.

(Before BETTS, J., December 10, 1862.)

BETTS, J.: This vessel and cargo were captured at sea as prize, by the United States steamer *Bienville*, May 27, 1862, and were brought into this port for adjudication. A libel was filed July 11, 1862, against the vessel and cargo, and, on return by the marshal to the monition, of due service thereof, no appearance being given for the cargo, a decree of default was regularly entered against that; and, a claimant having intervened in behalf of the vessel, and a claim therefor having been duly filed July 29, 1862, the cause was brought to hearing on that issue, and was argued for the libellants, the claimants appearing in court without contesting the suit further. Intermediate the capture and the final hearing, portions of the cargo, consisting of military equipments and supplies, were, by an interlocutory decree of the court, appraised, and, on application in behalf of the United States, were delivered over to the use of the government.

The vessel had a British registry, and her shipping articles, dated April 2, 1862, were for a voyage, not to exceed twelve months, from London to Bermuda, and any other port in the West Indies, North and South America, or the Mediterranean, and back to a final port of discharge in the United Kingdom or continent of Europe, between the Elbe and Brest. It appears from an indorsement on the articles that they were deposited by the vessel at the British consulate in Havana, May 21, 1862. No instructions, manifest, bill of lading, or other shipping paper was delivered from the vessel to the captors, denoting the time she left Havana, or the direction or cargo she took thence, or her or its destination; and the shipping agreement plainly leaves ample authority to her master to manage the voyage at his discretion. Some important papers of that description were, after the capture, found on the vessel, but they are not of a character to afford a clear account of the lading or of its destination or owners. The ship's log is equally void of perspicuity and certainty in its statements. The entries are made in a common-sized pocket memorandum book, ruled and bound in flexible leather. The heading is: "Left Falmouth for Madeira." The entries are in paragraphs for each consecutive day;

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The Patras.

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are written quite across two pages of the book, beginning April 13, 1862, and terminating May 9, and were apparently written at the same time, and with the same ink; and only one stoppage of the vessel is stated in that log. The vessel is alleged to have coaled at Funchal, Madeira, April 19. The official log enters the commencement of the voyage as "April 3, 1862," and the nature of it as "West Indies and Mexico." This log states that the ship was at St. Thomas May 10, taking in coal, and had a disturbance on board among the crew, and also another in the night at Havana, May 18. No mention is made in either log of any other port or place at which the vessel touched on her outward voyage, and there is no entry in either log respecting the vessel, her cargo, or her proceedings, after the 21st of May, 1862.

The master testifies that the vessel was bound to St. John, New Brunswick, on the voyage upon which she was taken, and that it began at London and was to have ended in the United Kingdom, or on the continent of Europe. The carpenter states the voyage to have been undertaken according to the shipping articles, and that he did not know that St. John was contemplated to be included within it, except that he learned so from the master at Havana. The master further asserts that he was wholly ignorant of the lading of the vessel; that he did not know what the various boxes, casks, &c., on board of her contained, and that the same cargo was on board at the time of her capture. The carpenter and the cook, or seaman, say that they understood that a large quantity of powder, in casks, and of muskets or rifles, in boxes, were shipped for the voyage in England, and the carpenter also says that he understood that the vessel was intended to make the port of Charleston. The master makes a widely differing estimate of the nearness of the vessel to Charleston when captured, from that made by the carpenter and the seaman; the master alleging that she was thirty miles from the bar, the carpenter that she was ten or twelve miles, and the cook, or seaman, that she was eight or ten miles. No affirmative fact is stated by any one of the witnesses on his examination, going to mitigate the pressure of the presumptive evidence, showing the culpability of the voyage as one plainly arranged with intent to violate the blockade of Charleston, and also to introduce into that port articles contraband of war. All three of the witnesses admit their knowledge of the existence of the war and of the blockade of Charleston when the voyage was undertaken, and at

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*The Nassau.*

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the time of the approach of the vessel to the port, and no suggestion is offered in proof justifying her position when arrested, directly in the vicinity of the port and heading for it.

A decree of condemnation and forfeiture must be entered because of the intention and endeavor of the vessel to run the blockade of Charleston.\*

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THE STEAMER NASSAU AND CARGO.

Vessel and cargo condemned for an attempt to violate the blockade, and for being engaged in transporting to an enemy port articles contraband of war.

(Before BETTS, J., December 11, 1862.)

BETTS, J.: The proofs in this case show that the vessel, registered as English, evaded the blockade of the port of Wilmington, N. C., on the 1st of May, 1862, with a cargo of cotton and other produce of the enemy's country, destined to Nassau, N. P.; that at Nassau she immediately took on board a lading consisting of arms and ammunition; and that on the 22d of the same month she departed therefrom with such contraband cargo, and with papers by which her destination purported to be to St. John, N. B., but took her course directly for Wilmington again, and was captured by the United States ships-of-war in its vicinity, and in the act of attempting to enter said port. The vessel and cargo, with several of the officers and crew, were sent to this port. A libel was filed July 12, 1862, and a claim in behalf of British subjects was filed July 29 last, claiming the vessel and cargo to be British property, by the British vice-consul at this port, with his test oath attached, verifying the prize to be British property, according to the best of his knowledge and belief, derived from his position in the consulate, and from conversations with the officers and crew of the vessel. The vessel had a British certificate of registry, executed May 16, 1862, to Augustus John Adderly, at Nassau, N. P. She was built in New York in 1851. No bill of sale or paper transfer of her at the time of registry is produced. The bills of lading and clearance were made out on the 21st of May, as were also the shipping articles, at Nassau, for St. John, N. B. The master, the mate, the engineer, and the firemen, parcel of the ship's company, and three passengers on board, were examined on preparatory interrogatories. Upon the proofs, it is clearly shown that the owners of the vessel and her lading, and the

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\* This decree was affirmed, on appeal, by the circuit court, November 14, 1863.

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The Stettin.

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ship's company, well knew of the existence of the war, and of the blockade of the port of Wilmington, when the vessel departed from that port on her last previous voyage, and when she attempted to re-enter it at the time of her capture; that on both occasions she was acting with an intention to violate the blockade, and that on the last occasion she was transporting to Wilmington articles contraband of war. It is, therefore, not requisite to detail more minutely the particulars of the proofs, or the doctrines of public law which determine the guilt and confiscability of the property.

A decree of condemnation and forfeiture of the vessel and cargo is rendered.\*

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THE STEAMER STETTIN AND CARGO.

Vessel and cargo condemned for an attempt to violate the blockade.

Imperfection and mutilation of the log-book.

False destination stated in the vessel's papers.

(Before BETTS, J., December 13, 1862.)

BETTS, J.: This vessel was English-built and documented, and was despatched by neutral charterers from England with a large miscellaneous cargo, in May, 1862, on a round voyage to Tampico, thence to any ports in the West Indies, the American States, or British North America, and back to the continent of Europe, the voyage to finally terminate in the United Kingdom. The charter-party was executed in London, March 4, 1862, between J. G. Pearson & Co., owners of the vessel, and Leach, Harrison & Forward, merchants of that place, shippers of the cargo. The crew list, the manifest of the cargo, and the bills of lading were all signed at Hull, in the latter part of March. The cargo was to be delivered at Tampico, to order. A letter on board, dated at Nassau, N. P., May 21, 1862, addressed to "S. Simpson, esq., supercargo steamer Stettin," and signed "Henry Adderly & Co.," directed the cargo to be taken directly to St. John, New Brunswick, as being a better market for it than Nassau. \*

The vessel and cargo were captured by the United States steamer *Bienville*, at sea, near the coast of South Carolina, and about thirty miles distant from the port of Charleston, on the 24th of May, 1862, she having been cleared at Nassau for St. John, N. B., four days previously.

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\* This decree was affirmed, on appeal, by the circuit court, November 18, 1863.

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The Stettin.

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No claim is interposed in the suit as to the cargo arrested, but the underwriters on the vessel intervene, by claim, for their interest under the policy.

The case was submitted to the court without argument upon the pleadings and proofs. The testimony of the master, the mate, the chief and third engineers, and one seaman on the vessel, was taken on preparatory examinations. The witnesses state that the capture was made May 24, at 6 a. m., from ten to twenty miles from the coast, and thirty-five miles outside of Charleston bar. The voyage was changed at Nassau, from Tampico to St. John. The master says that he had no knowledge that it was intended to run the vessel a different course from the one declared on the papers. The first mate and the third engineer state that they believed that the vessel was destined when she left Nassau, for a blockaded port in the southern States, from the proximity she made to such port; and the seaman testifies that that was the intention, because pilots were taken on board at Nassau, hired for the purpose of carrying her into a blockaded port. The master denies all knowledge of the owners or consignees of the cargo, or to whom it would belong if it reached the port of apparent destination. The first mate says that he supposed it was to go to some southern port, and that its apparent destination was changed at Nassau, by order of Adderly & Co., of that place. The third engineer also supposed, after leaving Nassau, that the cargo was to be delivered in some port of the southern States; and the seaman declares that it was to be carried to any southern port they could get into, and he supposed it was to be Charleston. All the ship's company knew of the blockade of the southern coast, and of the port of Charleston. The owners had the same knowledge. The master asserts that he does not know or believe that the vessel ever attempted to enter any blockaded port; he cannot say he ever heard anything which made him suspect or believe that the vessel was going into any port on the coast of North or South Carolina, or into any blockaded port. The first engineer declares a like ignorance on that subject. He cannot say whether or not he believes she intended to enter Charleston or any blockaded port. The third engineer says that he does not know of his own knowledge, but he believes, from his personal observation and general information, that she was attempting to enter covertly the port of Charleston when she was captured; and the seaman says that he believes that the vessel designed and attempted to break the blockade at that time, because,

about an hour and a half previous to the capture, he heard the captain say they were going to enter that port; that he, the witness, knew it before that time, from the actions of the master, who disguised the ship in her rigging and by paint, and that the intention was generally known on board a day or two previous to nearing the port. Other suspicious facts accompany the case. No log is furnished from the ship, or found with her, containing any entry after she started from the port of Nassau, May 21, 1862, and steamed out of the harbor, stopping at its entrance for passengers. That entry concludes the log, leaving space for another paragraph to fill up the page, and all the succeeding leaves of the book are blank. There are strong indications, in the interstices between the two leaves, that a full sheet has been abstracted between the last page written on and the succeeding one left blank. The suspicion that further statements of the proceedings of the vessel were originally made, following that narrative of the voyage so commenced, arises from the fact that the official log taken from the vessel is without any entry, so that the vessel is left destitute of all record of her proceedings. Such mutilation of the log might have been effected by an adroit and careful operation, and the case does not stand before the court entitled to intendments favoring an interpretation supporting the fairness and innocency of the transactions on the voyage. The representations of the voyage in the shipping articles, manifest, and charter were palpably fictitious, as there is no reasonable support to the assertion that the vessel was expected to perform the tortuous and protracted navigation so ostentatiously set forth at her outset; and the fact that Adderly & Co., of Nassau, appear at her first stopping place as the umpires of her destiny, although in no way named as consignees, shippers, charterers, or agents, augments the impression that a house so long and so openly occupied in the line of trade which this vessel seems to have been actively pursuing, became actors in the enterprise, on the understanding that it should result in a fraudulent infraction of our belligerent rights.

I am clear that the evidence convicts the vessel and cargo of the offence charged, and that the intention and attempt of the voyage were to enter the port of Charleston, in violation of the blockade there subsisting.\*

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\* This decree was affirmed, on appeal, by the circuit court, November 14, 1863.

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The Robert Bruce.

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## THE BRIG ROBERT BRUCE AND CARGO.

Vessel and cargo condemned for an attempt to violate the blockade.  
False and simulated papers as to the destination of the vessel.

(Before BETTS, J., December 16, 1862.)

BETTS J.: This vessel and cargo were arrested and sent to this port for adjudication as prize of war. A libel was filed in this suit November 6, 1862, and a monition and attachment were duly issued and served thereon on the same day, and returned in court on the 25th of the same month. No one intervening or appearing in the cause, the default of all persons in interest was, on such return, duly taken and recorded.

From the papers captured with the vessel, and the preparatory evidence before the prize commissioners, given by the master, the mate, and three seamen of the ship's company on board at the time of her seizure, the facts connected with the voyage and arrest of the vessel and cargo are shown to be these: The vessel had a certificate of registry, issued at Bristol, England, to William Gough, a British merchant, there resident, as owner, on the 7th day of February, 1856. Shipping articles were executed between the master and crew, August 26, 1862, for a voyage "from Hull to Halifax, Nova Scotia, thence to any ports or places in British North America or the United States, or North or South America or the West Indies, and returning to any port on the continent of Europe, or in the Baltic or seas adjacent, (with leave to call for orders,) and terminating finally in the United Kingdom, for a probable period of nine months." No manifest of the cargo, or clearance at the port of departure, accompanies the ship's papers. The ship's log, commences with this voyage, and designates it to be from Hull towards Halifax, and continues the entries day by day, on that route, to October 20, and there ceases. Another private log of the master, found on board the vessel, has entries showing that the Robert Bruce has, since 1859, run repeated trading voyages between Wilmington, North Carolina, and ports in England, the last of which began at Wilmington in December, 1861, and ended at Bristol, January 18, 1862. Several bills of lading from Hull to Halifax were found on board without the names of any consignees.

The prize was captured at about 8 o'clock a. m., October 22, 1862, by the United States gunboat Penobscot, at sea, off Charlotte inlet, about one mile from the land, on the coast of North Carolina, and some



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The Revere.

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twenty miles west by south from the bar of Cape Fear river. The master says that the vessel sailed directly from Hull to the coast of North Carolina, and intended to enter the port of Wilmington if she could evade the blockade; that he knew of the war and of the blockade of Wilmington, and presumes that his owner did; and that she had been in Wilmington in September, 1861, and brought from there a cargo of turpentine.

The evidence convicts the vessel and cargo of two grossly illegal acts, either of which subjects them to condemnation and forfeiture. The voyage was performed under false and simulated papers, representing it to be one from Hull to Halifax, when in truth, by the proofs, it was set on foot at Hull, and prosecuted, to the time of the capture, with intent to violate the blockade of Wilmington, and the vessel was seized in the act of attempting to fulfil that intention.

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THE SCHOONER REVERE AND CARGO.

Vessel and cargo condemned for an attempt to violate the blockade.  
False and simulated papers as to the destination of the vessel.

(Before BETTS, J., December 16, 1862.)

BETTS, J.: This vessel and cargo were seized, October 11, 1862, by the United States steamer Monticello, at sea, off the western bar of Cape Fear river, and sent into this port for adjudication. She was British built, and had a certificate of British registry, dated January 29, 1862, issued to Nehemiah H. Clements, of Yarmouth, Nova Scotia.

The prize was libelled and arrested in this district October 25, 1862, and no person intervening or claiming the vessel or cargo, a decree by default was duly rendered against both, November 11 thereafter. The shipping articles, executed in September, 1862, at Nassau, New Providence, stipulated for a voyage from that port to Baltimore, in the United States, and the vessel was cleared on that voyage, September 15, 1862, with a miscellaneous cargo. She had on board a bill of parcels or invoice, and two bills of lading from Henry Adderly & Co., and a letter from the same, all of the same date, dated at Nassau, and addressed to F. H. Montell & Co., Baltimore. The letter advises Montell & Co. that the articles are shipped to them for sale on account of the shippers, owners.

The master, the mate and one seaman were examined *in preparatorio* before the prize commissioners. The master testified that he was an Englishman by birth, but had resided in Charleston, with his family,

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The Revere.

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since 1847. He was appointed to the command of the vessel September 15, 1862, by one of the firm of H. Adderly & Co. He did not know the vessel or the firm before that day. The mate and the second mate belonged to South Carolina. The rest of the crew were English and Italian. About thirty-nine cases of the cargo consisted of haversacks or knapsacks for soldiers. There were 800 sacks of Liverpool salt, 99 barrels of pork, and buckets, brooms, matches, &c., in the cargo. The master knew of the blockade of the southern ports long previously. He commanded the Aigburth when she was seized, a vessel which was condemned in this court for a breach of the blockade. He knew that Wilmington was under blockade when the Revere was arrested. She was captured October 11, 1862, between 11 and 12 o'clock a. m., on the coast of South Carolina, Wilmington light-house bearing north-northeast, eleven or twelve miles off. The master knew that there was a warning on the vessel's register not to enter any of the blockaded ports south of the capes of the Chesapeake, but says that that was before he took command of the vessel. He says that it was understood between him and Adderly & Co., that if he did not see any blockading vessel he should go into Wilmington, or any other port; but if he saw no chance to go in, then he was to proceed to Baltimore. In case he got into any such port, he was to try and dispose of the cargo to the best advantage, and he was to be well remunerated. He supposes that the cargo, if it had been taken into any blockaded port, would have belonged to Adderly & Co. The other two witnesses confirm substantially the testimony of the master. The existence of the blockade was notorious. They supposed that the vessel intended to go into Wilmington, if not prevented by the blockading squadron, and they say that this vessel had run close into the North Carolina coast, and had lain off it some time, after having passed the coast of South Carolina near by, without being able to enter there.

The log affords no explanation of the course of the vessel consistently with the theory that she was pursuing the true navigation from Nassau to Baltimore. Her courses and distances are not noted, and, to judge from the report of the longitude she maintained, she must have hugged the coasts of the insurgent States from the time she reached their latitude, which apparently must have been within the first three days' run; but this conclusion is not very definite, as, during the whole

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The General C. C. Pinckney.

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period after her departure from Nassau, no natural objects are noticed on the log, nor are the distances run to the time of capture specified, either by the day or in gross.

I think it very palpable, upon the above proofs, that the vessel and cargo were prepared at Nassau, and despatched thence, for the purpose of evading the blockade at Charleston or Wilmington, and that her papers were simulated and falsified, with a view to cover that culpable purpose and attempt.

A decree of condemnation and forfeiture must be entered.

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#### THE SCHOONER GENERAL C. C. PINCKNEY AND CARGO.

Vessel and cargo condemned as enemy property and for a violation of the blockade.

The master and owner of the vessel, a resident of Charleston, S. C., purchased her there during the war, and loaded her with the produce of the country and brought her through the blockade of that port, she having papers issued to her by the enemy: *Held*, that she and her cargo must be condemned, and that a claim by the master that he had always been a loyal citizen of the United States, and had purchased the vessel and cargo as an investment, in order to withdraw himself and his family and property from the enemy country, could not be considered in this court.

A loyal citizen of the United States is disqualified from appearing in a prize court to question the legality of the seizure of his property acquired during war in an enemy country by trade with the enemy.

(Before BETTS, J., December 18, 1862.)

BETTS, J.: This vessel, laden with 94 bales of cotton and 10 barrels of rosin, came out of the port of Charleston under the rebel flag, and was captured about fifty miles from Charleston bar, May 6, 1862, by the United States steamer *Ottawa*, and sent to this port for adjudication. The papers and proofs and pleadings, consisting of a libel, filed June 4, and a claim and representation by the master and owner, filed June 24, 1862, were submitted to this court for decision, November 26, 1862, with an argument or importunate remonstrance on the part of the owner of the vessel and cargo, by his counsel.

The vessel was registered to Herman Koppel, a citizen of the Confederate States, April 18, 1862, having been conveyed to him in Charleston by bill of sale, by the former owner, a citizen and resident of that place, on the 7th day of April, 1862. These papers, and the crew list for the present voyage, and the appointment of the said Koppel as master of the vessel, were authenticated by documents received by the purchaser from the rebel government at Charleston, and delivered up on the capture of the vessel. No fact impeaching the foregoing charac-

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The General O. O. Pinckney.

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ter of the transaction, that the vessel was purchased during the war and the blockade, from an enemy owner, in the enemy country, and was laden with the produce of the enemy, is in evidence in the case. But the claimant of the vessel and cargo, he being also master of the vessel, suggests and claims, through his counsel, as matter of protection against the arrest, that his fealty to the Confederate States was simulated and illusive; that he never was a subject of that government, nor willingly associated with it; that he is a native of Prussia, and loyal, in sentiments, to the United States government; and that the vessel and cargo were purchased by him with the proceeds of his own industry, with intent solely to rescue such proceeds from the rebel government, and withdraw himself and his family and property from that confederacy.

This court can deal with the matter solely upon the principles of prize law, applicable to a state of facts of this similitude. If any relief exists anywhere in behalf of the claimant, it must be obtained from the United States government, the party injured by his misconduct, and the claim, on the foundation assumed for him, cannot be considered in this tribunal. 1st. His own written acts, supported by his oath, prove the vessel and cargo to be property of the enemy state. 2d. He withdrew it covertly from a blockaded port in time of open war. 3d. He was, at the time of procuring the property, and had been for several preceding years, a resident in the enemy country, in solidarity with its industry and interests. 4th. He assumed allegiance to that government by covering his property with the protection of the confederate flag, and of ship's documents from the enemy government—acts which disqualify him from appearing in this court to contest the legality of the capture. 5th. Even if he could justly maintain the assertion that he was, in sentiment, a loyal subject of the United States, he would stand disqualified from appearing in a prize court to question the legality of the seizure of his property acquired during the war, in an enemy country, by trade with the enemy. (12 U. S. Stat. at Large, 319.)

The law upon most of the foregoing points has been so repeatedly cited and relied upon in this court, in suits recently heard and decided, that the grounds on which it is supported need not now be further recapitulated.

Decree of condemnation and forfeiture.\*

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\* This decree was reversed, on appeal, by the circuit court, December 3, 1863.

## THE SCHOONER ALBERT AND CARGO.

Invocation of proofs from another case, on the allegation that the consignor and consignee of the cargo were the same in the two cases, and that the shipments had relation to a common commodity and purpose, a bill of lading found on board of one vessel covering cargo on both vessels.

False papers as to destination of vessel and cargo.

Mutilation and imperfection of log-book.

Purchase of vessel from an enemy during the war by a resident in a neutral country with intent to employ her in violating the blockade.

Vessel and cargo condemned for an attempt to violate the blockade.

(Before BETTS, J., December 23, 1862.)

BETTS, J.: In this case, heard at the same term and almost simultaneously with that of the schooner *Maria* and cargo, the proofs given in the latter suit are invoked by the libellants and made part of the evidence. The vessel and cargo were captured May 1, 1862, at sea, a few miles off Charleston harbor, by the United States gunboat *Huron*, and were sent to this port for adjudication. The libel, demanding their confiscation as prize of war, was filed May 17, 1862. On the 10th of June thereafter, the master of the vessel, John F. Stein, intervened, and filed claims and answers to the libel, in behalf of Thomas McWilliam, as owner of the vessel, and of Francisco Otero & Co. and Rafael L. Sanchez, as owners of different portions of the cargo.

The ship's papers exhibit a British certificate of registry, given at Nassau, April 9, 1862, to Thomas McWilliam, of that port, but a resident of Matanzas. The vessel was built in New Jersey, and then took the name of *Irene*. Her crew list bears date April 18, 1862, and is for a voyage from Nassau to New York, without any return port being designated. A clearance of the vessel at Nassau for the port of New York was granted by the receiver general, April 20, 1862. There were on board bills of lading and invoices of portions of the cargo from Nassau and Matanzas, and a charter-party between Thomas McWilliam and Francisco Otero & Co., executed in Matanzas March 20, 1862, letting the vessel to the latter for the transportation of a cargo to be furnished by the hirers at Matanzas and Nassau on a voyage to New York.

The suit from which evidence is invoked into this case is that of the United States *v.* The schooner *Maria* and cargo. It was instituted May 21, 1862. The vessel was registered at Nassau, April 16, 1862, to William Smith, of Glasgow, Scotland, as having been built in Charleston, South Carolina, and was cleared at Nassau for New York

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The Albert.

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April 16, 1862, and was captured April 30, 1862, by a United States vessel-of-war, near the coast of South Carolina. She had on board an invoice of forty boxes, containing 80 dozen cotton cards, shipped March 28, 1862, by Rafael L. Sanchez, at Matanzas, to be delivered at New York to Martinez, Gonzales & Co. The said Sanchez, by his claim and answer, filed in that suit July 8, 1862, claimed the merchandise as his property; and it is alleged by the counsel for the libellants that the consignor and consignees in that suit (the Maria and cargo) and the one here on trial (the Albert and cargo) are the same parties, and that the shipments have relation to a common commodity and purpose. On that allegation the evidence in the suit of *The United States v. The Maria* was allowed by the court to become, by invocation, evidence in the present suit.

That evidence, so brought into this case, shows that a Mr. Monet, of the firm of Monet, Jemenez & Co., charterers of the schooner Maria, was a passenger on board of that vessel at the time of her capture, and had with him on board a triplicate bill of lading for the cards on the two vessels, in which it was expressed that the cards should be landed in a southern port. It also appears, by comparison of the ship's papers, found on board the two vessels, that the said cards were shipped in both vessels under a common statement in the shipping papers of the destination of the vessels from Matanzas to New York, and a common letter of instructions by the shipper to the consignees.

This evidence shows, satisfactorily, that the shipment of the cards was for some southern port, and that the destination of this vessel, equally with that of her consort, the Maria, was simulated and false in that respect. The bill of lading engaging the delivery of one of the shipments at a southern port was carried covertly on board of the Maria, by one of the carriers of the goods, as his instructions and guide for the delivery of the cotton cards shipped on both vessels.

The log of the vessel, found on board, presents a suspicious appearance in several particulars. The whole front part of the book, consisting of many leaves, is cut out and absent. The first entry remaining bears date April 21, 1862, and appears to be the continuation of a preceding statement. The log does not name the time or place of departure, nor the place of destination; but the first entry implies that the vessel was then under way, and ten miles east of the Hole-in-the-Wall. The latitude and longitude are first noted April 23, and the latitude is recorded each succeeding day in April, but the longi-



DISTRICT COURT,  
THE DISTRICT.

Invocation of  
cargo was  
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False purchase  
Mutilation  
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*Trade is not mentioned upon the log. The vessel was captured on the 1st of May, but no entry is made of the fact. It is manifest that the log was kept with a view to conceal the true nature and intention of the voyage; and its gross falsification amounts, under the rules of the prize law, to an act of piracy, which incurs the penalty of forfeiture of vessel and cargo. The purchase of the vessel from an enemy by a resident in a neutral country, and the knowledge by the purchaser and the charterers of the existence of the war and of the blockade, and the intention to employ the vessel in violation of the blockade, are condemnatory facts, and, on the proofs before the court, plainly induce the forfeiture of vessel and cargo.*

Again, there are in proof cumulative offences, in the conduct of this voyage and of its antecedent one, either one of which subjects the vessel to confiscation; and the last one is conclusively criminal of the cargo. The voyage last preceding this one was made in evasion of the blockade of Charleston, and the present voyage was single and entire, from Matanzas, with the privilege of stopping at Nassau. From the latter port the voyage was directly and palpably for the purpose of violating the blockade of Charleston. All the witnesses concur in statements of the transaction which denote that intent unmistakably.

There is nothing in the case demanding a more detailed exposition of the reasons supporting the decree which the court feels constrained to pronounce. The adventure is flagrantly one of the many disclosed to the public by the incidents of this war, in which an exceedingly frail covering is paraded to screen a bold determination and effort to drive a criminal traffic with the rebels from neutral trading points situated in the vicinity of blockaded ports. That traffic is not diminishing in boldness and perseverance, but, though favored with manifold successes in the aggregate, yet the eyes of law and justice are not so completely purblind but that many efforts to violate the public law and the rights of the government are frustrated, and result in the discomfiture of pursuits which tend to the great wrong of this country, and to a disruption of harmony between the United States and their neutral friends.

A decree of condemnation and forfeiture of the vessel and cargo will be entered.\*

\* This decree was affirmed, on appeal, by the circuit court, November 11, 1863.

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The Maria.

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## THE SCHOONER MARIA AND CARGO.

No legal transfer of the vessel shown from her enemy owner to her neutral claimant.  
She came out of a blockaded port clandestinely, on the voyage next preceding the one on which she was captured.  
She knowingly attempted to violate the blockade.  
Her papers were false as to her destination.  
Her log-book was mutilated and altered.  
Vessel and cargo condemned.

(Before BETTS, J., December 23, 1862.)

BETTS, J.: Many of the matters connected with this vessel and her cargo and voyage, and the prosecution and defence of this suit, are strikingly coincident with those occurring and considered in the preceding case of *The United States v. The schooner Albert and cargo*; and the proofs in the one case have, in several respects, been reciprocally invoked into the other, and made part of its proceedings.

The Maria was Charleston built, and proceeded from that port to Matanzas, in March, 1862, with a cargo of cotton. She took in a cargo at Matanzas and Nassau for New York, and a charter agreement was entered into between William Smith, her owner, and Messrs. Monet, Jemenez & Co., merchants at Matanzas, March 26, 1862, to add to and complete her cargo at the Bahama islands, for the port of New York. The cargo consisted chiefly of salt, especially adapted to the Charleston market. There was also a quantity of cotton cards, shipped by R. L. Sanchez. A provisional register of the vessel was taken out in the name of William Smith, at Nassau, New Providence, April 16, 1862. A crew-list was executed by the master, at Matanzas, March 20, and by the mate and men, at Nassau, April 16 and 19, 1862, for a voyage to New York, and back to the port of Nassau. All the cargo was shipped in the name of the Charleston hirers, except one shipment by R. L. Sanchez. The vessel cleared at Nassau April 16, but the destination of the cargo was not named. The log described her departure from Nassau, Sunday, April 20, 1862, towards New York, and her arrest by the United States steamer Santiago de Cuba at 1 p. m. on the 1st of May.

It is alleged in the libel that this seizure was made at sea, near the South Carolina coast, on or about the 30th of April. The master, intervening in the suit, and claiming and answering for the owner, admits the allegation in the libel to be correct, and as the log contains no other entry after the close of the last day of April than the mention of the capture, that undoubtedly occurred at sea-time, 1 a. m. instead of 1 p. m.



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The Maria.

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Monet, Jemenez & Co. intervene and claim a part of the cargo, 800 bags of salt and two cases of cigars. Rafael L. Sanchez claims forty boxes, containing eighty dozen of cards for cleaning cotton, as shipped at Matanzas for New York, to touch at Nassau. The names of Monet, Jemenez & Co., printed in the bill of lading, signed by the master at Matanzas, March 26, 1862, as shippers of the goods, are erased in the bill found on board, and the name of R. L. Sanchez is inserted in the place, as shipper. Francisco Otero & Co., merchants, of Matanzas, were charterers of the vessel, and were to be her consignees at Nassau and New York. The bill of lading directs the consignees named therein to pay freight on their consignments to Messrs. F. Otero & Co., the charterers.

The facts, established by direct proof or strong presumption, were claimed by the libellants to be:

1. That the schooner, being enemy property, went, on the voyage directly preceding the one on which she was captured, with a cargo, from Charleston to Matanzas, and in violation of the blockade of the former port.
2. That her owner colorably attempted, at Matanzas, to change her title to a neutral ownership, but that the vessel remained, in law, enemy property.
3. That at Matanzas and Nassau she took on board cargo destined for Charleston or a blockaded port, and attempted, with such cargo, to enter a blockaded port.
4. That her papers, and the representation of her voyage, were intentionally simulated and false.
5. That her log was culpably mutilated, and also contained false entries, intended to mislead belligerent cruisers.
6. That the voyage was fitted out and prosecuted with full knowledge of the existence of the war and of the blockade of the southern ports of the United States, with a design to evade the blockade.

The claimants of the vessel and cargo contest these positions in pleading and on trial, and maintain that the voyage was honest and lawful in all particulars, and that the approach of the vessel, out of her true course, towards a blockaded port, was compelled by stress of weather and injury to the vessel therefrom, and a want of water.

These various propositions have been subjects of such repeated consideration in this court for many months past, that all labored discussion of the points at this time will be unnecessary to disclose their legal bearing in the cause. The decisions in regard to them will remain the law governing the action of this court until changed by the judgment

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The Maria.

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of the higher tribunals, and the attention of the court will be limited to ascertain the conclusions justly deducible from the proofs given in the cause.

The master and mate of the vessel, and Monet, a passenger on board, differ somewhat as to the time and place of the capture of the vessel. The master says it was about the 30th of April, 1862, near 12 o'clock, in latitude  $30^{\circ}$  and some minutes north, and longitude  $94^{\circ} 4' 30''$  west, but he rather thinks that the longitude was  $80^{\circ} 4' 30''$  west, and presumes the latter is the reckoning by the mate in the log-book. The mate testifies that the capture was on the 1st of May, twenty or thirty miles off the coast of South Carolina; and the passenger, Monet, states the time of capture to have been Wednesday, April 30, eighteen or twenty miles off land, and in the vicinity of Charleston. The entry in the log is that the prize was hailed by the capturing vessel May 1, at one p. m., and the computation of her position at the close of April 30 is entered at latitude  $32^{\circ} 7'$  north, longitude  $80^{\circ} 44\frac{1}{2}'$  west. The statement of this matter by the master is of no great moment, other than as showing that his verbal representation of facts connected with the voyage is to be accepted with caution. For instance, it is palpable that if the vessel was, when seized, at either point of latitude or longitude adopted by the master in his evidence, she would have been widely clear of any existing attempt to evade the blockade of Charleston or of the coast of South Carolina.

The master says that he heard from Smith that he purchased the vessel at Matanzas from an agent of her American owner, and received a bill of sale, but the witness never saw any bill of sale, and does not know its contents.

The master had known, for ten months, of the war and the blockade of Charleston. These facts were publicly notorious on board. The master imputes her position out of the due route to New York to violent weather, and damages to the vessel, and loss of water on board, incurred after her departure from Nassau. He says he was not steering for any particular port, but was endeavoring to make the blockading squadron, to obtain a supply of water; that the course of the vessel was altered April 27, to endeavor to fall in with the blockading squadron to obtain water; that on the 22d or 23d of that month she had experienced a gale and shipped large quantities of water, and had two water casks stove in and lost all the water they contained; and that when the vessel left Nassau she had four casks of water. The original and natural entries in the log respecting the state of the weather on the

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The Mary Teresa.

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22d and 23d days of April are these: "22d, p. m., begins with fresh breezes, with rain, squally; 3 p. m., double-reefed the main and single-reefed the foresail, took in the flying jib; 5 p. m., tacked to the SW.; 6 p. m., set the flying jib; 11 p. m., took in flying jib and tacked to NW." Then follow, in lighter ink and more constrained formation of the words: "Shipped several heavy seas, and stove the head in water-casks." After that paragraph is written, in the same hand and ink as the first entry, "M., fresh breezes." This supplies a forcible presumption that the paragraph in regard to water-casks was interpolated in the entry at an after day, to support the excuse set up on the seizure of the vessel, that she was seeking relief because of sea damages and the loss of water. Neither the mate nor the passenger, in their testimony, support the statements of the log, or the evidence of the master in this respect, on his examination *in preparatorio*. Another flagrant inconsistency in the master's evidence under the 12th and 24th interrogatories forcibly impairs his title to credit as a witness.

Upon the facts and law of the case, the libellants have, in my judgment, established the culpability of this voyage. The claimants fail to show a legal transfer of the vessel from her enemy owner to the neutral claimant. She came out of a blockaded port clandestinely on the voyage next preceding this on which she was captured. She was hired, freighted, and despatched on this voyage with full knowledge of the existence of the war and of the blockade of Charleston and the confederate ports. She was destined for Charleston or a blockaded port in that vicinity, and an attempt to make such unlawful voyage was made and persisted in, in her navigation, to the time of her capture. The papers of the ship, setting forth the destination of the voyage, were intentionally falsified. The log was unlawfully mutilated, and falsely changed and varied in important entries.

The condemnation and forfeiture of the vessel and cargo are decreed.

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THE SCHOONER MARY TERESA AND CARGO.

Vessel and cargo condemned for an attempt to violate the blockade.

(Before BETTS, J., December 24, 1862.)

BETTS, J.: This vessel was built in Wilmington, North Carolina, in 1862, and was provisionally registered at Nassau, New Providence, to Edward Gardner, a merchant of Charleston, South Carolina, April 29, 1862. Her shipping agreement was dated at Nassau, New Provi-

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The Mary Teresa.

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dence, in May, 1862, for a voyage thence to Halifax, Nova Scotia, and back to Nassau, and she was cleared at Nassau with a cargo consisting of 100 sacks of salt, 2 barrels of mackerel, 2 cases and 5 barrels of drugs, 2 bags of coffee, and 1 case of shoes. She was captured at sea off Charleston harbor, May 10, 1862, by the United States gunboat Unadilla, and sent to this port for adjudication. She was libelled as prize in this court May 29. A claim was filed in favor of British subjects having an interest, June 24, by the acting British consul, and one November 22 thereafter, by Edmund Gardner as owner. No party appeared personally to argue the cause on the trial, but the papers in the cause were submitted to the court by the district attorney and the counsel for the claimant. Silliman, the master of the vessel, an American citizen, testifies, on his examination *in preparatorio*, that the vessel came into Nassau with a cargo of cotton from Charleston about a week before this voyage; that Nassau was her next clearing port after that voyage; that the mate owned the cargo on that voyage, and came out in the vessel as master or mate from Charleston; that Henry Adderly & Co., of Nassau, were consignees of that cargo; that they are agents of several mercantile houses in Charleston, and many of the vessels arriving from Charleston are consigned to them; that all on board knew that Charleston was under blockade; that the vessel had no log; that she was directed to the northward after she left Nassau, and along the coast of the United States; and that she was captured about twenty miles south-southeast from Charleston bar. Gardner, the mate, says that he lived at Charleston, where his family lives, for two years; that he owns the vessel and most of the cargo; and that he knew that the port of Charleston was under blockade. Thomas Heffman, a passenger, testifies that he heard the captain or mate (he thinks the mate) say on the voyage that Adderly & Co., of Nassau, owned the vessel, and the mate the cargo; and that he thinks that firm loaded the cargo on board at Nassau. William O. Bourke, a seaman, testifies that he is a native and resident of Charleston; that he heard it said on board that the vessel was going into Port Royal, South Carolina, for water; and that he has heard Gardner, the mate, say that he was owner of the vessel and cargo.

It is quite clear upon the registry that the legal ownership of the vessel was in a resident of Charleston, South Carolina. In that character she was subject to capture as prize by our own municipal law. But, in reality, she most probably was the property of Adderly & Co., of Nassau, whose practices in like methods of evading the blockade of

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The Ella Warley.

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the southern ports are flagrantly notorious. The testimony establishes an unmistakable purpose, preparation, and attempt to run the vessel and cargo into Charleston. The master says that she was captured about twenty miles off that port. She was there in contradiction of the destination indicated by her shipping papers, and without a shadow of evidence justifying such departure from her declared voyage. The character of her ship's company, her last employment, her agents at Nassau, and the description of goods forming the cargo, speak very distinctly as to the intent with which she ran from the place of her departure directly to within eighteen or twenty miles of Charleston, under the semblance of seeking the port of Halifax.

The condemnation and forfeiture of the vessel and cargo are decreed.

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## THE STEAMER ELLA WARLEY AND CARGO.

The mutilation of the log-book of a vessel is sufficient cause for her condemnation as prize if she was seized under circumstances which placed it in her power to violate a blockade, unless the mutilation is clearly and satisfactorily explained by the proofs.

The vessel attempted to violate the blockade.

She was running without any log.

No *bona fide* purchase of the vessel by her neutral claimant from her enemy owner is shown.

She violated the blockade on the voyage next preceding the one on which she was captured.

She was captured while attempting to violate the blockade.

Vessel and cargo condemned.

(Before BETTS, J., December 24, 1862.)

BETTS, J.: This steamer was captured April 24, 1862, at sea, by the United States steamer Santiago de Cuba, and was sent to this port for adjudication, and was here libelled June 4, 1862. A claim was interposed June 17, by the British acting consul at this port, in behalf of British subjects as owners of the vessel and cargo, and the claim was supported by the test oath of that officer. Various intermediate proceedings and interlocutory orders, not now necessary to be detailed, were subsequently had in the suit, respecting the sale of the vessel and the delivery of the military stores and equipments on board of her to the use of the United States. The cause was brought to hearing on its merits before the court at the close of this term, and was argued by counsel for the libellants. The counsel for the official claimant objected to the maintenance of this action, on the ground that the case is not within the jurisdiction of the court, and that the vessel is not liable for misconduct in any antecedent voyage. The counsel for the libellants excepted to the legal right of the claimant

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The Ella Warley.

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to contest the cause in court, and insisted that the suit on trial was without lawful defence by any party in interest.

A provisional register of the vessel, which was built at Baltimore, was issued to Edwin Charles Adderly, at Nassau, N. P., December 18, 1861, and was found on the vessel when captured. There were also found a clearance for St. John, April 24, 1862, stating the cargo on board; bills of lading and letters of instructions to their agent, by Adderly & Co., in respect to portions of the cargo, and by other shippers in respect to other portions of it, addressed to the port of St. John; and a roll of the ship's company and shipping articles, from Charleston, S. C., to Nassau, for a voyage from the former port to the latter, apparently in the months of March and April, 1862, preceding the present voyage; and those papers were produced in proof from the prize.

Numerous leaves and pages of the log were found to have been cut or torn from the front part of the book, leaving no other entry than an obscure heading to the second remaining leaf, seeming to import "Str. Ella, from Nassau, bound to St. John." The front face or binding of the book is marked, in handwriting and print, "Nassau, N. P.—Log-book of Str. Ella Warley, Capt. Alexander Swasey." This condition of the log-book, evidently a designed mutilation, in fraud of the rights of the libellants, under the law of nations, will of itself afford adequate cause for the condemnation of the vessel and cargo, if the vessel was seized under circumstances which placed it in her power to violate a blockaded port, unless those suspicious appearances are clearly and satisfactorily explained by the proofs. (The Two Brothers, 1 Ch. Rob., 131; The Pizarro, 2 Wheat., 227.)

Swasey, the master of the vessel, was a citizen of Charleston, S. C., and resided there with his family. The vessel was captured about the 25th of April, and about in latitude 27° 40' north, and longitude 76° 50' west, as the master testifies, according to his recollection. He says, on his examination, that the vessel under his command sailed with a cargo of cotton, in December or January last, from Charleston to Nassau; there took in a return cargo and carried it to Charleston; discharged it there, then took in another cargo of cotton and went again to Nassau, and discharged it there; and received on board, at Havana, part of the lading, and afterwards filled up at Nassau, making up the cargo seized with the vessel; that this cargo was consigned to W. R. Wright, at St. John, whom he, the master, does not know; that the cargo taken by the vessel from Nassau to Charleston was also

consigned to Wright, but was taken possession of in Charleston by Lafitte, who said that Wright was his agent; that he, the master, does not know that this cargo was to be delivered to Lafitte in the same way, and cannot swear it was not to be; and that he knew that the port of Charleston and other southern ports were blockaded, and also knew so on the former voyages he made to and from the same. The mate testifies that he heard on shore at Nassau, before commencing the voyage, that the vessel was to run the blockade of the southern ports, and he believes that the vessel would have run into a blockaded port if she could have prosecuted her voyage. The chief engineer is of the same impression. He does not know where the vessel was bound, but he understood she was cleared for St. John. The first assistant engineer testifies to the same effect. He says that the master told him the vessel was bound for St. John, but that all on board had good reason to believe they were going to Charleston. The second assistant engineer says that, on the previous voyage to Charleston from Nassau, the steamer was cleared and bound, as in this instance, for St. John. N. B. Harrison, a fireman, testifies that he was told by the master and others that the vessel was bound to St. John; that that was the only reason he had for thinking her destination was for St. John; that the vessel was laden with cargo much needed in the southern States, and the men were talking about their families in Charleston, and from that he sometimes thought she was going to a southern port.

From a review of the evidence, written and oral, I think there results a violent suspicion that the voyage in question was set on foot and prosecuted *mala fide*, with intent to make a return voyage directly to the port of Charleston, and that the vessel was, when captured, making the attempt to fulfil that purpose. She was running without any log, leaving the coverings of the book to show its mutilation and her destination, after the voyage had commenced. The preparatory surroundings were in exact similitude to those employed by the same owner and master on a previous voyage of this vessel to Charleston from Nassau. The evidence does not establish a *bona fide* purchase of the vessel by the neutral claimant. He shows no valid bill of sale given in support of the title, and he replaced the title in the hands of the vendor's agent, with power to resell, under conditions indicating that the consideration money stipulated on this purchase was not to pass from the present claimant, but was to remain substantially with the alleged purchaser, and might be reclaimed by him on returning the vessel to the assumed vendor. I think, also, that this voyage on which

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The John Gilpin.

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the capture was made was designed to be, and was substantially, the next voyage after the one on which the vessel escaped by violating the blockade of Charleston, as this voyage did not begin from Havana, where the vessel touched, but at Nassau. This case, therefore, is fairly within prior decisions of this court, (Upton's Prize Law, 288 to 291,) founded on doctrines sanctioned by Sir William Scott. (The Christiansberg, 6 Ch. Rob., 376; The Randers Bye, Id., 382, note.)

A decree of condemnation and forfeiture of the vessel and cargo is ordered.\*

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THE SCHOONER JOHN GILPIN AND CARGO.

A claim and answer in a prize case should be confined to the issue of prize or no prize.

The failure to bring in any one of the officers or crew of the vessel but the mate excused.

The offence of attempting to violate a legal blockade is not consummated merely by the existence of a purpose to commit the act, but the vessel must be intercepted while endeavoring to carry out the guilty design.

However earnestly the criminal intent may have been entertained and proceeded upon for a time, if it be really given up before the arrest the property is not liable to confiscation because of the previous wrongful purpose.

A vessel setting out with the object of evading a legal blockade will be relieved from the penalty following her detection in seemingly adhering to that purpose in her doings, only upon clear evidence that at the time of capture the fraudulent and guilty intention had been wholly relinquished.

It is not the mere mental design which the law punishes, but the overt act in starting for or proceeding towards the prohibited port with the knowledge that it is blockaded, and continuing on that course up to the arrest.

In this case the vessel and cargo were not in the act of attempting to violate the blockade when captured.

The cargo was the product of the enemy country, and was procured by purchase in an enemy port during the war by citizens of a loyal State.

Trade of every description with an enemy during war is, by the law of nations, inhibited to the subjects of the nation prosecuting the war.

By statute (12 U. S. Stat. at Large, 257) all commercial intercourse between citizens of the loyal States and those belonging to the insurrectionary States is unlawful, and the property acquired through such intercourse is subject to forfeiture.

Cargo condemned.

(Before BETTS, J., December, 1862.)

BETTS, J.: This vessel and cargo were captured, as prize, April 25, 1862, in the Mississippi river, opposite the city of New Orleans, by the United States gunboat Katahdin, and were brought thence to this port for adjudication. They were here libelled September 16, 1862, and the monition and attachment issued thereon were returned duly served October 7 thereafter. On the 26th of September, 1862, a claim to the cargo, consisting of 318 bales of cotton, was interposed by Nahum Stetson, treasurer of the Weymouth Iron Company, a corporation established by the laws of the State of Massachusetts, averring

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\* This decree was affirmed, on appeal, by the circuit court, July 17 1863.



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The John Gilpin.

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that the company were owners of the cotton at the time of its attachment, with which claim a deposition was offered, as a test affidavit, and filed on the return day of the monition, October 7. On the same day Nathaniel H. Babson and six other persons filed a claim and answer to the libel, alleging that they were citizens of Massachusetts and owners of the vessel.

Those claims and answers sufficiently denied the legality of the capture of the vessel and cargo as prize, and, in addition to that issue, attempted to make evidence, by allegations therein, of various matters of excuse and defence against the charges in the libel, extraneous and independent of the issue of prize or no prize. This mode of pleading is faulty, and not allowable as a primary defence in a prize suit. The point has been largely considered in this court in repeated cases recently before the court, and the decisions fix the practice which must prevail here until it is changed by a contrary determination of the appellate courts. (*The Delta*; *The Empress*.)

No papers relating to the vessel or cargo were found on board of her when she was captured, or have been brought into this port. The evidence embraces only the examination of the mate, who was on board at the capture, and was afterwards brought with the vessel to this district. The assistant district attorney, by affidavit on file, sufficiently excuses the failure to produce other members of the crew, they having been dispersed in the general disturbance attending the capture of the city of New Orleans by the United States naval forces, at the same time with the seizure of this vessel, and the apprehension and imprisonment of the master of the vessel as a notorious rebel, by the military authority. This case is thus brought within the authority of the preceding case of the *Elizabeth* and cargo, and the usages under the continental and British practice in prize suits.

The mate testifies, on his preparatory examination, that he resides in New Orleans, and his family in the State of Louisiana; that he was present at the capture of the vessel at the wharf of Algiers, in the Mississippi, opposite New Orleans; that he heard the captain say that Dundridge, who resides in New Orleans, was owner of the vessel; that Forsyth, the master of the vessel, resides in New Orleans; that six persons were on board when the vessel was captured; that eight, including a supercargo, composed the ship's company, all of whom came on board at New Orleans; that he, the witness, was first mate when the vessel was taken; that he does not know the exact port to which she was destined when she left New Orleans; that he was told by her master it was some port of the northern States; that she was

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The John Gilpin.

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laden with cotton and staves; that he does not know that she cleared from New Orleans, and does not know the owner of the cargo; and that he, the witness, and the master knew that New Orleans was under blockade before the vessel left or attempted to leave that port. The vessel left New Orleans on the 15th or 16th of February last, and went down the river several miles below Forts Jackson and St. Philip and there anchored for several days, when the commander of the forts ordered the vessel back above the forts, and the design to get out was given up. The supercargo returned to New Orleans. The crew consented, at the master's request, to stay with the vessel until the blockade should be raised. No further attempt was made to get out of New Orleans.

The court has had occasion, in more than one previous instance, to advert to the rule of the prize law which subjects neutral property to capture when attempting to violate a legal blockade. The offence is not consummated merely by the existence of a purpose to commit the act, but the vessel must be intercepted while endeavoring to carry out the guilty design. However earnestly the criminal intent may have been entertained and proceeded upon for a time, if it be really given up before the arrest, the property is not liable to confiscation because of the previous wrongful purpose. This is wholly a question of evidence, and, no doubt, a vessel setting out with the object of evading a legal blockade will be relieved from the penalty following her detection in seemingly adhering to that purpose in her doings, only upon clear evidence that at the time of capture the fraudulent and guilty intention had been wholly relinquished. (1 Kent's Comm., 147.) It is not the mere mental design which the law punishes, but the overt act, in starting for or proceeding towards the prohibited port, with the knowledge that it is blockaded, and continuing on that course up to the arrest. (Halleck's International Law, ch. 23, sec. 23, and citations.) Had this capture been made whilst the vessel was proceeding down the river from New Orleans, the vessel and cargo would have been, within the meaning of the rule, guilty of an overt act. They stopped, however, before leaving the port, waiting for authority to make the contemplated voyage, and returned to the place of departure, where they remained until arrested as prize. The cause of the seizure was not that the vessel and cargo were in the act of evading the blockade, but was a cause not connected with that offence. I think, therefore, that on the facts and the law of the case that charge is not sufficiently proved to demand the condemnation of the vessel or cargo.

The libellants having suspended the proceedings against the vessel, and prosecuted them against the cargo, the court said :

The prosecution of the vessel under this capture having, for the present, been suspended by the libellants, and the action being now continued against the cargo, no judgment is declared in relation to the vessel. The cargo was seized while water-borne. It was obtained and shipped with the intention to transport it to another State, though a loyal one, of the Union. In this respect, it stands subjected to a double liability to seizure and condemnation. It was enemy property, procured by purchase in an enemy port, and also a product of the enemy country, and it could not, in that condition, be obtained and brought thence by our own citizens, through purchase, or by barter or exchange, because trade and traffic of every description with an enemy, during a state of war, is, by the law of nations, inhibited to the subjects of the nation prosecuting the war; (Wheat. on Captures, 101; 1 Kent's Comm., 74, 81; Halleck's International Law, 470, 484, 498;) and, by statute, all commercial intercourse between citizens of the loyal States and those belonging to the insurrectionary ones is declared to be unlawful, and the property acquired through such intercourse is subjected to forfeiture. (12 U. S. Stat. at Large, 257.)

A decree of condemnation and forfeiture of the cargo of the schooner will be entered.\*

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#### THE SCHOONER BELLE AND CARGO.

The vessel on her voyage next preceding the one on which she was captured had violated the blockade.

She was laden and virtually owned by parties notoriously actively concerned during the war in carrying on an illicit trade with the blockaded ports of the enemy.

Her master and mate were residents of the enemy country, and were employed on the voyage at the instant of its commencement.

There is no proof of the *bona fide* purchase of the vessel by her neutral claimant from her enemy owner.

Although her clearance was from Nassau for Philadelphia, there is no written evidence in her papers that she was put upon or attempted to pursue that voyage.

Vessel and cargo condemned.

(Before BETTS, J., December, 1862.)

BETTS, J.: The acting British consul for this port intervenes and answers, and claims against the libel filed in this suit against the vessel, and takes issue thereon. When the cause was called for hearing, the counsel for the libellants read the pleadings and proofs brought into court, and the counsel for the claimants entered a formal protest against the jurisdiction of the court and the liability of the vessel and

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\* This decree was reversed, on appeal, by the circuit court, November 7, 1863.

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The Belle.

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cargo to proceedings in prize, on the ground that they were neutral property, belonging to English subjects.

The libel was filed May 17, 1862, and the claim July 17. The trial was had December 2 thereafter. The vessel had on board, when captured, a certificate of registry, dated at Nassau, April 15, 1862, issued to George D. Harris, of Nassau, a merchant, stating that she was foreign built, at Charleston, South Carolina, in 1845; also, a shipping agreement with the master and crew, made at Nassau in April, 1862, "from the port of Nassau to ——— and back to Nassau;" also, a clearance from the port of Nassau to Philadelphia, with a cargo of three hundred and twenty sacks of salt, fifteen bags of pepper, and forty boxes of soap, dated April 16, 1862; bills of lading of the salt and soap shipped by Henry Adderly & Co., of Nassau, to Philadelphia, to order or assigns, April 19; and a letter of advice from Adderly & Co. of the same date, addressed to W. S. Stockman, Philadelphia. The bills of lading refer to a charter-party as governing the shipment. That document was not produced from the vessel with the ship's papers, nor was any log-book, invoice, or manifest of the cargo.

The vessel was captured by the United States steamer *Uncas*, April 26, 1862, at sea, while approaching the coast of South Carolina, off Cape Romaine, in nineteen fathoms of water. The master was an English subject by birth; he and his family had been residents in Charleston for several years. He joined the vessel at Nassau on the 17th of April. The crew consisted of six persons in all, mostly Italians. The mate was an American, and, by the printed constitution of an artillery company at Georgetown, South Carolina, found on board of the prize, marked with pencil as belonging to him, he appears to have been a member of that company, and, as such, necessarily a resident of South Carolina. The master, on his examination, evidently presses his statements strenuously, to maintain that his voyage was one to Philadelphia and nowhere else; but his representations as to his destination are contradicted by the shipping articles, and his assumed ignorance of the previous employment of the vessel is placed in doubt by his admission that he had heard at Nassau that, on her voyage next preceding the one on which she was captured, she arrived at Nassau from Charleston, with a cargo of cotton. He says that he took charge of her on the 17th of April, and had only known her two or three days previously; and that he understood that Mr. Harris was connected in some way in business with Adderly & Co. No proof is furnished that a bill of sale was given to Harris on the alleged pur-

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*The Napoleon.*

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chase of the vessel, or that any consideration money was actually paid. The existence of the war and of the blockade of the southern coast was notorious at the time, as stated by the witnesses. The vessel was captured west of the Gulf Stream, making towards the South Carolina coast, off Cape Romaine, within soundings, and, as the master supposes, fifty miles from the cape. The circumstances in evidence raise impressions strongly inculcating the motives and movements in the voyage.

1. The vessel had just come into the port of Nassau from an evasion of the blockade of Charleston, bringing with her a guilty cargo.

2. She was laden and virtually owned by parties notoriously actively concerned during the war in carrying on an illicit trade with that port and the southern blockaded ports from and to Nassau.

3. The master and mate were residents of Charleston or its vicinity, and had been taken up and employed on the voyage in question at the instant of its commencement.

4. There is no proof of the lawful transfer of the vessel from an enemy ownership, nor indeed of any actual sale or delivery of her on a *bona fide* purchase.

5. There are no written evidences in the ship's papers that she was put upon or attempted to pursue a voyage to the port of Philadelphia.

A decree of condemnation and forfeiture of the vessel and cargo is ordered.

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THE SCHOONER NAPOLEON.

A claim and answer in a prize suit cannot put in issue anything but the question of prize or no prize.

Collateral subjects can be controverted in prize cases only by means of pleadings and further proofs, specially authorized by the court after a decision on the first issue.

The vessel had, up to the time of her capture in enemy waters, been employed by the enemy for purposes connected with the operations of war, and was found with the enemy's flag and the enemy's artillery on board. She was captured by the United States naval squadron, acting in co-operation with the land forces, in the attack upon Newbern. Her owner, though he was a loyal citizen of a loyal State, had left her in charge of an agent, who allowed her to be so employed, and it did not appear that she was taken by the enemy by duress or in fraud of her owner's right. Under such circumstances her owner is concluded from denying her hostile character.

No equity of lien or claim, however urgent, held by innocent third parties, is allowed to prevail, in a prize court, against property seized while in use by a belligerent.  
Vessel condemned.

(Before BETTS, J., December, 1862.)

BETTS, J.: The vessel proceeded against in this case was captured by the United States naval squadron, acting in co-operation with the

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The Napoleon.

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land forces, in the attack on and seizure of Newbern, North Carolina, in March last. The vessel was totally abandoned, when taken possession of by the United States armed vessels. The evidence is, from reports prevalent at the time and place, that armed troops in the rebel service had been stationed on board of her until driven out by the close approach of the United States forces, and then left her without any crew, papers, or equipment, other than several pieces of artillery which were found on board, and were placed on shore by orders of the commandant of the United States squadron, and that the vessel was afterwards laden with rosin and other stores, and ordered to this port for adjudication. A libel was filed June 3, 1862, demanding the condemnation of the vessel. A claim and answer thereto, in the name of D. C. Murray, a citizen of and resident in the United States, was put in on the 27th of June thereafter, upon which two defences are raised : *first*, that the libel is indefinite in its charges and allegations, and, therefore, insufficient to found a conviction upon ; and, *secondly*, that the averments in the answer present an adequate bar and defence to the suit, and, if not evidence of themselves, are entitled to be supported by proofs *aliunde* on the part of the claimant.

The rule of practice in prize suits upon these points is as fully settled in law, in this court, as it lies within the competency of the court to determine. The libel has all the fulness and particularity of statement demanded in prize suits, and the claimant cannot bring any other issue in contestation, by an answer to the libel, than the question of prize or no prize. (2 Wheat., note, App., 19; *The Empress*, *The Delta*, and other cases, in this court.) Collateral subjects can be controverted in prize cases only by means of pleadings and further proofs, specially authorized by the court after a decision on the first issue.

There having been a hostile seizure of the vessel, her tackle and equipments, in enemy waters, by a United States squadron co-operating with land forces in an attack upon Newbern, and in the capture of that place, she must be regarded as lawful prize, unless some fact showing her legal exemption from seizure be established, or be necessarily implied from the circumstances of the capture. If the fact be conceded that the *Napoleon* was *bona fide* the property of the claimant, and that he was loyally opposed to her being employed or held by the enemy, that would not relieve her from liability to condemnation in a prize court, unless she was taken out of the possession of her rightful owner, and held in use by the enemy by duress, or at least in fraud of his right. The true title may be in the claimant, but, as it

came to him through the enemy holder, the law will presume that such retaining of possession by the vendor was by the consent or permission of the purchaser. It is not necessary that the vessel should be placed in the control of her possessor with a view to her being employed in any warlike acts or in the commission of a wrong against others, but whether she was chartered or loaned, or how otherwise she was allowed to be employed by the subjects of a nation at war, prize courts will treat her as enemy property, equally as if full ownership of her had vested in the enemy. The external symbol of her employment by the enemy or his officers, for purposes immediately or mediately connected with the operations of war, concludes her real owner from denying her hostile character. (*The Carolina*, 4 Ch., Rob., 256; *The Orozembo*, 6 Ch., Rob., 433; 3 Phillimore's Int. Law, sec. 272; Halleck's Int. Law, 641.)

This vessel was, at the time of her capture, clothed with symbols of hostility. She was riding in enemy waters, had been occupied by enemy troops to the time of her seizure, and had on board the enemy's flag and a heavy armament of artillery. I think, also, that the reports of residents in the port, that she had been, previous to her seizure, used in running the blockade of that port, and had been also fitted out as a privateer, are legitimate evidence of her antecedent course of employment. Although all these acts were without the sanction of and violently in opposition to the wishes of the claimant, who is personally a loyal citizen, of high character and integrity, and a resident merchant of this city, opposed strenuously to the rebellion, and has been deeply injured pecuniarily by the misuse of his property on this occasion and otherwise, yet the acts of his agent, with whom the vessel was left by him, determine the character of the vessel; and the integrity of her real owner cannot secure her from the consequences of her illicit employment. The claimant must appeal to his government for relief from the forfeiture. The court is not empowered by the existing laws to adjudge the case upon principles of fair and reasonable equity, but must adhere to and apply the severe edicts of prize law. It is understood that Congress may, at its present session, make provision for the protection of the property of loyal residents of the north which may be in the hands of the rebels, and subject to forfeiture for its criminal use by them. That is a matter to be controlled at the discretion of the legislature. The courts cannot, in time of war, depart from the strict behests of the law, by shielding property from the effects of a hostile character impressed upon it by the culpable conduct of those who are intrusted with it, or who so hold it that it can be

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The Scotia.

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turned to the aid of the enemy, or to a hostile use against our own government. No equity of lien or claim, however urgent, held by innocent third parties, is allowed to prevail in a prize court against property seized while in use by a belligerent. (1 Kent's Comm., 87.)

A decree of condemnation and forfeiture of the vessel, her tackle, &c., will be entered.\*

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THE STEAMER SCOTIA AND CARGO.

Vessel and cargo condemned for an attempt to violate the blockade, and because the papers of the vessel were false as to her destination.

(Before BETTS, J., December, 1862.)

BETTS, J. : This vessel and cargo were seized, October 24, 1862, on the coast of South Carolina, by a United States vessel-of-war, and were sent to this port for adjudication. They were libelled November 15, 1862, and the claimants, British subjects, intervened and filed their claim to the vessel and cargo December 9. The ship's papers, the preparatory proofs and briefs in writing, were submitted to the court by the counsel for the respective parties.

The court has examined all the evidence in the case, and, unless an appeal be taken in this suit, it will be quite needless to go into a detailed statement of the facts of the case, or the reasons upon which the judgment of the court is founded. The result of the proofs is, that the vessel was British built, and was registered at Liverpool May 13, 1862. She had on board shipping articles, dated October 17, 1862, for an agreed voyage from Nassau to St. John, N. B., (written over "New York,") and back to Nassau, and a clearance at Nassau, dated October 18, 1862, of vessel and cargo for St. John. No other papers of the vessel relating to the voyage or cargo are brought into court, except two letters from members of the crew to the captain, dated at Nassau, July 25 and 26, 1862, stating to him that they understood that the vessel was destined to a blockaded port, and that they protested against being taken there. Six witnesses—the mate, a passenger, the first, second, and fourth engineers, and the steward—testify, on their examination, that, although the voyage was, on the papers, stated to be to St. John or New York, yet the destination was actually to Charleston, and was so represented by the master. It was notorious to all that Charleston was a blockaded port. The vessel

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\*An appeal from this decree was taken to the circuit court. Subsequently the Secretary of the Treasury released seven-eighths of the vessel to the claimant, and the appeal as to the rest was abandoned.



was captured some twenty miles from Charleston, and two miles inside of the station of the blockading and capturing vessel. There is no ground to question the culpability of the voyage. Because of simulated and false papers, and of an attempt to evade the blockade of Charleston, there must be a decree of condemnation and forfeiture of vessel and cargo.

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THE STEAMER ANGLIA AND CARGO.

Vessel and cargo condemned for an attempt to violate the blockade.

(Before BETTS, J., December, 1862.)

BETTS, J.: This vessel and cargo were captured by the same United States war vessel, and almost simultaneously with the seizure of the steamer Scotia and cargo. The summary statement of that case tallies so closely, in the leading facts, with this, that a repetition of them will be tautological, unless the judgment of the court is to be reviewed on appeal, when the reasons inducing it will be more largely set forth. The voyage named in the papers in this case is, first, from Liverpool to Nassau, and thence, if required, to ports in the West India islands, and back to ports in Europe. The whole representation of the adventure, upon the ship's papers, is more formal and mercantile than in the case of the Scotia; but the testimony of the witnesses examined, including the master, the mate, and the pilot, concurs in stating, unreservedly, that although the ostensible voyage described on the papers was from Nassau to St. John, N. B., yet the real destination was to Charleston, and that the vessel was captured while attempting to enter that port. All concerned in the voyage knew that the port was blockaded. Upon the general principles declared in the case of the Scotia, a decree of condemnation and forfeiture is also rendered against the steamer Anglia and cargo.



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THE SCHOONER WATER WITCH AND CARGO.

Vessel and cargo condemned as enemy property and for an attempt to violate the blockade.

(Before BETTS, J., December, 1862.)

BETTS, J.: This vessel was captured August 23, 1862, off Aransas bay, Texas, by the yacht Corypheus, a tender to the United States bark Arthur, and was libelled in this court November 24, 1862. On the return of the attachment of the vessel and cargo, December 16, due proceedings were taken by the libellants for obtaining a decree by default against both, because of the failure of any party to intervene

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The Water Witch.

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and defend. The ship's papers and the preparatory proofs were submitted to the court, and a final decree of condemnation was thereupon prayed by the libellants.

Only one witness, the master of the vessel, was brought into this port and examined by the prize commissioners. The master, by his affidavit, excuses the non-production of the remainder of the captured crew, because they were all Spanish and Portuguese subjects, as they informed him, and had been taken out of prison in Havana, and impressed into service on board the prize, and it was regarded as imprudent and dangerous to send them with the vessel to this port. They were, accordingly, left at Pensacola.

The master of the vessel, Thomas B. King, testifies that he resides in Texas with his family, has been a resident for seventeen years of that State, and was a citizen of that State before the rebellion. He claims to be a subject of Great Britain. He asserts that he owns the vessel and cargo; that she was bound from Havana to Matamoras, on the Rio Grande, and that she was not intentionally pursuing a course wide of that port when arrested. The place of capture was but two or three miles from land, near the mouth of Aransas harbor, and one hundred and twenty or one hundred and thirty miles from Matamoras. She was seized because she was suspected of attempting to evade the blockade. Her lading was salt, rope, drugs, soda, potash, skins, and one hundred and fifty kegs of powder. She was bought by the master about eighteen months before her capture, and was conveyed to him by a bill of sale, in Galveston, by William Johnson, a resident there. He obtained a provisional register for the vessel in his own name, (as of the State of Texas, in the United States of America,) at Kingston, Jamaica, May 27, 1862. He knew all about the war, and supposed that the ports of Texas were blockaded. He had sailed the vessel out of the blockaded port, with a cargo, to Havana, in February previous. He went out of Galveston with her in the night, and in a fog. The frigate Santee was then blockading the port. He had a lady passenger on board from Havana to Aransas and Galveston when he was seized. The papers are exceedingly confused, and seem to include references to various voyages, without any distinctness or discrimination, but they and the proofs abundantly establish the hostile character of the vessel and cargo, and also the design and attempt of the owner of both to violate the blockade existing at the port where she was arrested.

Let there be a decree of condemnation and forfeiture of vessel and cargo.

## THE SCHOONER RAMBLER AND CARGO.

Vessel and cargo condemned for a violation of the blockade.

(Before BETTS, J., December, 1862.)

BETTS, J.: This vessel and cargo left Sabine Pass, Texas, September 6, 1862, destined to Havana with a cargo of cotton. On her previous voyage she arrived at Sabine Pass with a miscellaneous cargo. Both in going out and in returning she had violated the blockade, the master and owners knowing it to be existing. No paper title to the vessel is shown. It appears, by the examination of the master, that she was laden by residents of Sabine Pass. He had heard that she was owned by an Englishman, but does not know who the owner was, if a foreigner.

No person intervenes to claim vessel or cargo. No principle or question of law arises out of the testimony demanding discussion by the court. The case is a bald one, void of all semblance of justification or apology. The vessel and cargo were palpably enemy property, and the vessel was put boldly into the illicit traffic, as a fixed course of business, in carrying on vigorously a trade in violation of public law, and in aid and support of hostilities against the government of the United States.

The condemnation and forfeiture of the vessel and cargo are accordingly decreed.

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TWO HUNDRED AND EIGHTY-TWO BALES OF COTTON AND OTHER PROPERTY.

It is no legal ground of objection to the jurisdiction of the court in a prize case that the arrest was made out of its territorial authority.

The court has jurisdiction, under the law of nations and by municipal law, when the subject-matter of the suit is prize of war, without regard to the locality of the arrest or cause of action; and it is unimportant to the question of prize or no prize whether the capturing land and sea forces act in conjunction or separately.

Where a combined action exists between vessels-of-war and land forces in making a capture, it is usually cast upon the latter to prove that their co-operation was direct and positive, to authorize their sharing in the prize, and they are not ordinarily recognized as joint captors unless it is proved on their part that the capture was produced by their active interference.

The prize court has cognizance of all captures in an enemy country made in creeks, havens, and rivers, when made by a naval force solely, or in co-operation with land forces.

The property in this case, consisting of cotton, rosin, staves, and planks, having been captured by the naval forces of the United States during the year, in the attack on Newbern, N. C., and being enemy property, employed at the time by the enemy in aid of hostilities against the United States, by being used in building fortifications, was condemned as prize of war.

(Before BETTS, J., December 30, 1862.)

BETTS, J.: The above merchandise was brought into this port from Newbern, North Carolina, on board the schooner Napoleon, and was

here arrested as prize, under process of attachment returned into court July 8, 1862. The claimants, Dibble & Brothers, intervened and filed their claim and test affidavit July 22, 1862, as to the rosin described in the libel, and deny the jurisdiction of the court in the cause. The cause is now submitted to the court for decision, upon the proofs put in, and the briefs in writing of the counsel for the libellants and claimants, and upon the default of all the other parties in the suit. All the property was arrested and taken into possession by the naval forces of the United States at the capture of Newbern, in March, 1862, by the co-operation of those forces with the army of the United States in the attack and subjugation of that place and the seizure of the property claimed as prize.

It is no legal ground of objection to the jurisdiction of the court that the arrest was made out of its territorial authority. The court has jurisdiction under the law of nations, and by municipal law, when the subject-matter of the suit is prize of war, without regard to the locality of the arrest or cause of action; (2 U. S. Stat. at Large, 759; 1 Kent's Comm., 357; Act of August 6, 1861, 12 U. S. Stat. at Large, 319; Upton on Maritime War and Prize, ch. 6, 2d ed.;) and it is unimportant to the question of prize or no prize, whether the land and sea forces act in conjunction or separately. Those are questions relative to the distribution or appropriation of the prize property, and do not necessarily, as to third parties, enter into the determination of the right of capture. This capture was made by vessels-of-war conducting warlike operations within the territorial limits of the State of North Carolina, on navigable waters, and the place of attack was approached by the fleet and army, water-borne, from the high seas. The location became such that each arm of the public force might act severally in its appropriate sphere, or they might co-operate in action. Where a combined action exists between ships-of-war and land forces in making a capture, it is usually cast upon the latter to prove that their co-operation was direct and positive, to authorize their sharing in the prize, and they are not ordinarily recognized as joint captors unless it is proved on their part that the capture was produced by their active interference. (Halleck's Internat. Law, ch. 30, § 15; 2 Wheaton, Appendix, 65.) It seems admitted by Chancellor Kent to be the clear rule of prize law that the prize court has cognizance of all captures in an enemy country made in creeks, havens, and rivers, when made by a naval force solely, or in co-operation with land forces. (1 Kent's Comm., 357; *The Emulous*, 1 Gallison, 563.) This court has, in sev-

eral instances, adopted the like rule, as applying to captures made in bays, inlets, and sea communications, within various rebel States. This case does not call for more than a recognition of the principles upon which like seizures have been adjudged in this court, during the present war, to be prize captures, because it is not now designed to extend these references to a full argument, comprehending all the debatable points attending the subject.

The witnesses examined before the prize commissioners in this suit were Edward L. Haines, acting master in the United States navy, Ferdinand Crocker, captain of the army gunboat Hussar, and John West, captain of the gunboat Chasseur. The acts which they witnessed, or in which they participated, were not performed for the purpose of capturing the property in question. Those witnesses disclose where the prize property was seized and under what circumstances it was taken. The same witnesses are sworn in nine several suits, which are prosecuted for the collective merchandise seized. The suits are only discriminated by the names of the vessels employed to transport the property from the place of capture to this port for adjudication; and the evidence has no relation to its situation afloat anterior to the warlike attack upon Newbern, but is limited to the actual taking of the merchandise libelled. Mr. Haines testifies that he was present at the attack upon Newbern and the capture of that place, March 14, 1862, by a naval squadron under the command of Commodore Rowan. The navy took possession of the town, and the crews were placed about the town in various positions, and were employed by the commodore to carry the naval stores across the river into the town and secure them there. The witness was assigned by the commodore to take charge of such stores, and to hold them for the government, or to place on the several parcels the mark "U. S. N." The entire property was transported to New York on various vessels, as means therefor could be procured. A great part of the cotton and rosin seized had been employed in building fortifications in defence of the town, and the residue was owned by citizens of Newbern, who aided the rebellion by every means in their power, and who are still in the confederate army. Cannon were mounted by the enemy behind those defences, and there the enemy defended the place on the attack by the United States forces. Armed resistance was made to the taking of the town, and many guns were fired on both sides. The capture of the place was made by the flag-ship Philadelphia and other ships of the navy assisting her. This witness was on board one of the armed vessels and was engaged in the action. He says he is well assured that the entire property seized was

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The Annie Deas.

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the manufacture or production of Newbern. The place was, prior to the capture of this property, in a state of armed insurrection, as was notorious to all, until it was captured, as above stated. Two of the brothers Dibble are now in the confederate army. The same leading facts are stated by the other two witnesses who were examined. No one intervenes for the other property named in the libel and monition, and judgment by default was rendered against the two hundred and eighty-two bales of cotton, the two thousand white oak staves, and the quantity of yellow pine planks proceeded against in the suit.

This property having been all captured during the war, and being at the time employed by the enemy in actual aid of hostilities waged against the United States, and being enemy property, it is decreed to be subject to condemnation and forfeiture to the libellants.\*

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THE SCHOONER ANNIE DEAS AND CARGO.

Vessel and cargo condemned for a violation of the blockade.

(Before BETTS, J., December 31, 1862.)

BETTS, J.: This vessel and cargo were captured by the United States gunboat Seneca, off Charleston bar, November 20, 1862, as prize of war. The vessel, being unseaworthy, was appraised by a board of naval survey, and left at Port Royal, South Carolina, in charge of Admiral DuPont. The cargo was transported to this port for adjudication, and was here libelled, December 12, 1862, and, on the return of the attachment and monition in open court, a default and a decree thereon were, on motion of the United States attorney, duly entered in court against the cargo and the valuation of the vessel on such appraisal.

The master, the mate, and one seaman, captured with the vessel, were examined by the prize commissioners *in preparatorio*. No papers of the vessel were produced in court with the proofs. The master testifies that he is a native of England, but resides, with his family, in Charleston, South Carolina. He was present at the capture of the vessel and cargo, on the night of November 20, 1862, about five miles from Charleston, while the vessel was coming out of Charleston. There were then in sight a large number of the United States blockading squadron. The witness does not know the names of the owners of the vessel, but was told that they reside in Nassau, New Providence.

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\* This decree was reversed, on appeal, by the circuit court, July 11, 1864, for want of jurisdiction in the district court.

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The Ouachita.

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He was appointed her master, November 2 or 3, 1862, by Mr. Johnson, her agent, at Charleston. The crew were all British subjects, and were all, except the mate, who belonged to the vessel, previously hired at Charleston. The voyage was to have ended at Nassau. The cargo consisted of 125 barrels of spirits of turpentine and 68 of resin. The master says that he has no papers relating to the vessel; that all of them were thrown overboard just previous to her capture; and that the bills of lading were thrown overboard also. He knew of the war, and that Charleston was under blockade at the time. The mate says that he is a native of Maryland, and a resident of North Carolina, and that when the vessel was captured she was endeavoring to run the blockade of Charleston.

This resumé of the evidence places beyond question the wilful and studied culpability of the voyage in question. The vessel and cargo were deliberately employed to violate the blockade of Charleston, and illicitly run a cargo of enemy products out of that port.

Let there be a decree of condemnation and forfeiture of the cargo, and for the appropriation of the appraised value of the vessel.

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THE STEAMER OUACHITA AND CARGO.

False destination on the papers of the vessel.

Spoliation of papers.

The entire cargo of the vessel was contraband of war, and was thrown overboard while she was being chased, before her capture; and her claimant was part owner of another vessel recently condemned in this court for a violation of the same line of blockade.

If the vessel arrested as prize was acting in violation of public law, she is amenable to trial and condemnation therefor in behalf of the United States, whether the persons or means employed in making the seizure had authority to make it or not.

It is enough that the government comes into the national court demanding the condemnation of an offender; and the court never inquires whether the party or thing proceeded against has been regularly or irregularly brought under attachment or complaint.

Vessel condemned for an attempt to violate the blockade and to introduce into the enemy's country a cargo of articles contraband of war.

A motion to redeliver to the master his nautical instruments denied, he having been actively engaged in acts of hostility against the rights of the United States and the public law.

(Before BETTS, J., December 31, 1862.)

BETTS, J.: This vessel was captured at sea, near the coast of the Carolinas, October 14, 1862, having, during the chase of her by the United States steamer Memphis, thrown overboard, before capture, her cargo. The prize was sent to this port for adjudication, and was libelled in this court November 28, 1862. Thomas S. Begbie intervened and filed his claim to the vessel December 16, 1862.

1. He alleges that he is a British subject, and a resident of London England.

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The Ouachita.

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2. He denies that the vessel is prize of war, and asserts that she was seized by the *Memphis*, a British merchant vessel, owned partly by the claimant and partly by Denny, another British subject and resident, and that the United States government had no rightful possession and ownership of the *Memphis* when she was used in the capture, but that she was unlawfully placed by the court at the disposal of the United States before her condemnation, and is not now fully condemned, the sentence being on appeal before the circuit court, and that, therefore, there was no legal seizure. A test oath to the claim was made by Captain T. S. Gilpin, December 3, 1862.

The vessel had on board a certificate of registry, executed at London, January 14, 1862, to Thomas Sterling Begbie, and an agreement with T. S. Gilpin, as master, and a crew, for a voyage of about twelve months, dated London, August 4, 1862, from London to British North America, the American States, &c., &c, to a final discharge in the United Kingdom. The register of the vessel has indorsed on its back a note of its deposit at the custom-house, St. George's, Bermuda, September 15, and its return to the master, September 20, 1862. There was also found on board a letter to the master, dated Nassau, August 26, 1862, from Benjamin W. Hart, giving instructions to him how to conduct his vessel to avoid the Yankee cruisers; and another letter to T. S. Begbie, dated October 3, 1862, without place of address or signature, likewise giving suggestions and cautions respecting United States cruisers molesting the vessel and voyage. There was on board a memorandum of cargo, specifying wholly articles contraband of war, dated October 3, 1862, but having no signature or place of execution written upon it. The prize was cleared at St. George's, Bermuda, September 30, 1862, bound for Havana. The papers above referred to are all that were produced from the vessel on her capture, and the prize-master states, in his deposition, that they are all that were found on board the prize. He further states that the vessel was chased from 6 a. m. to 3 p. m. before she surrendered. The master, on his examination, says, that when the vessel left Bermuda she had on board the ship's register, the shipping articles, a clearance, an invoice of cargo, one bill of lading, and the letter from Mr. Hart. He is unable to remember what other papers or letters were on board at the time, but says that none of those papers, and no papers connected with the vessel, were destroyed. The mate speaks of a log-book kept by him on board. The vessel was captured at sea, off the coast of the southern States. The master says that it was in 32° north latitude, that he



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*The Ouachita.*

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does not know the longitude, that he supposes she was from 150 to 200 miles off the coast, and that he had heard they were about opposite to Wilmington. The mate testifies that he supposes the vessel was 50 or 100 miles off the coast. The second mate says that he understood, at the time, that the capture was off Wilmington, but he was not told how far.

If the master is correct in his representation of the latitude, the vessel was about opposite to Charleston; and if the longitude had been furnished by the log, or other competent proof, it could have been readily ascertained how near she had approached the land. At all events, it is manifest she must have been wide of any reasonable route from St. George's to Havana.

If this cause is appealed, it may merit more detailed reasoning in support of the decision to be rendered; but, as it is presented to the court upon these proofs and the argument of the respective counsel, I hold as follows:

1. The suspicion is impressive and cogent that the representation, in the clearance of the vessel, that the voyage was from St. George's, Bermuda, to Havana, was simulated and false, and that she was so immediately in a course towards blockaded ports as to justify the presumption that she was attempting to enter one of them.

2. All the ship's company were fully aware of the war and of the blockade of the ports towards which she was running.

3. The absence of the log-book, of the invoice of the cargo, and of the bill of lading, proved to have been with the vessel, affords, unexplained, vehement presumption of their intentional destruction or suppression by the ship's company.

4. The vessel was fitted out for the voyage at St. George's, her entire cargo being contraband of war; and it also appears, in the course of the evidence, that the owner of this vessel was also part proprietor of the Memphis, recently condemned in this court for an illegal violation of the same line of blockade.

The point made for the claimant, that the capture of this vessel by the Memphis is void at law, on the ground that the latter vessel was incompetent to be employed to that end or in that service, cannot be regarded as of any weight. She was captured by a vessel commanded and employed by the United States naval forces, and acting under its flag and authority.

If the vessel arrested was acting in violation of public law, she is amenable to trial and condemnation therefor, in behalf of the United

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Fifty-two Bales of Cotton.

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States, whether the persons or means employed in making the seizure had authority to make it or not. It is enough that the government comes into the national court demanding the condemnation of an offender; and the court never inquires whether the party or thing proceeded against has been regularly or irregularly brought under attachment or complaint. The government are entitled to have the violated laws vindicated by the punishment of the offender, without question as to the propriety of the acts or agencies used in bringing the offence to judgment. (*The Amiable Isabella*, 6 Wheat., 1.)

There must be a decree of condemnation and forfeiture of the vessel, for being employed in an attempt to violate the blockade of the ports of the southern States, and to introduce therein a cargo of articles contraband of war.\*

NOTE.—My impression is that the question raised between the parties about the surrender to the master of this vessel of the nautical instruments, as being his personal property, was deferred for further hearing. If a delay is not asked for by either party, the court is prepared to dispose of the point.

*January 2, 1863.*—Ordered, that the motion for the redelivery of nautical instruments to the master be denied, he having, as appears in proof, been actively engaged, on board of his vessel, in acts of hostility against the rights of the United States and the public law.

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FIFTY-TWO BALES OF COTTON.

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Cotton condemned, having been purchased by the claimant, a citizen of the United States and of a loyal State, in the enemy's country, during the war, and having been arrested while water-borne and in the act of being exported from there in violation of the blockade.

(Before BETTS, J., December 31, 1862.)

BETTS, J.: The cotton proceeded against in this suit was captured, July 15, 1862, in Aransas bay, Texas, on board a scow or lighter, by the United States bark *Arthur*, and sent into this port for adjudication, where it was libelled, October 1, 1862. The claimant intervened, and filed his claim to the property, November 3, 1862.

It is useless to recapitulate in detail the facts stated in the libel and proofs, as the claim interposed and attested to by the claimant states, and substantially admits, all that is asserted by the witness for the libellants, as well as the supposed grounds or excuse for the acts done by the claimant. The evidence shows that the war and the blockade

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\* This decree was affirmed, on appeal, by the circuit court, July 17, 1863.

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were known to the master and owner of the Monte Christo, and that she was chartered by the claimant to transport this cotton from Aransas to the port of New York. The claimant admits that he is a native and resident merchant of New York, and that he purchased the cotton in Texas, with confederate funds, since the war and the blockade, with intent to bring it from Texas north, and chartered the Monte Christo to that end. The vessel was placed in the harbor of Aransas in order to receive this cotton on board. While the cotton was in the act of being carried in flat-boats or lighters to the vessel, and before it was laden on board, it was captured by the United States, and the Monte Christo was burned.

Upon these facts, it results that the cargo was arrested while it was in the act of being exported from the enemy country in evasion of the blockade of the port. But in addition to that, the claimant, being a citizen of the United States, was disabled from obtaining a lawful ownership of the cotton, by purchasing it from the enemy in the enemy country. He was interdicted all trade with the enemy, and the cotton remained liable to capture as enemy property, being water-borne at the time.

These points of law have been repeatedly considered and passed upon in prize suits during this war. The claimant has no legal defence to the suit. If he has any remedy, it must be by a remission of the forfeiture by the government.

Let there be a decree of condemnation and forfeiture.\*

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THE SCHOONER MAJOR BARBOUR AND CARGO.

The question of the allowance by the court of costs and fees to counsel and officers in prize cases discussed.

The court having at a previous term made a final decree distributing the proceeds of sale in the case, and awarding costs to various parties, a motion to reopen the question of costs was denied.

After the lapse of the term in which a decree is rendered in a prize case, the authority of the court to revoke or alter it is extinct.

The act and joint resolution of July 17, 1862, in respect to prize cases, discussed.

(Before BETTS, J., January, 1863.)

BETTS, J.: This vessel and cargo were captured as prize, January 28, 1862, off the coast of Louisiana, by the United States war steamship De Soto, and sent to this port for adjudication. She was here libelled, March 18, 1862, in the name of the United States and the

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\* This decree was reversed, on appeal, by the circuit court, July 17, 1863.

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capturing ship De Soto, and process of attachment and monition was on the same day issued thereon to the marshal against the prize, and was returned by him April 1 thereafter, duly served. In the intermediate time, (March 28, 1862,) an intervention was made, by claim and answer, in behalf of affreighters of the cargo, for the voyage on which the vessel was arrested, and the litigation was prosecuted upon that issue between the libellants and claimants to the final decision of the cause in this court. The suit was noticed for trial and brought to hearing April 28, 1862. Two days were fully occupied with the oral discussion of the case, and the counsel also reserved the privilege of laying before the court written arguments for the respective parties. Those supplementary arguments were received, and the whole case was considered by this court, and on the 28th of May the final decision on the merits was rendered, but it was not presented by the United States attorney to the judge, in form, for signature, until July 29, 1862.

On the 13th of April Mr. Upton gave in a petition of the master, for himself and crew, to intervene in the suit as captors of the prize, and to share in the distribution of its proceeds. On bringing in the report of the prize commissioners upon the order of reference to them, a decree designating the vessels entitled to share in that distribution was signed October 13, 1862. On the 12th of September the prize commissioners had their bill of costs for services rendered in the suit taxed by the judge; Mr. Upton his, as counsel for the captors, on the 27th of September; the district attorney his, August 2; the marshal his, December 15; and the clerk his, December 9, 1862. The counsel for the schooner Kittatinny presented no bill of costs in their behalf for taxation.

The *renditioni exponas* had been issued on the condemnation decree. April 21, returnable the first Tuesday of June, and \$800 of the proceeds of the vessel were paid into the registry of the court on the process, July 3. The residue, \$43,767 76, appears, by the clerk's entries, to have been paid by the marshal directly into the treasury December 10, 1862. Previous notices of the time of the taxation of costs in the suit were given reciprocally by all the officers, except the counsel for the schooner Kittatinny, to the district attorney, and by the district attorney, as to his costs, to Mr. Upton, counsel for the captors. The commanding officers of the captor-vessels must be named in the libel. (Stated Prize Rule 47.) It was those captors named in the libel for whom alone the notice of appearance was given by the counsel, (Mr. Upton,) as far as was officially known to the court; although,

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undoubtedly, all other vessels participating in the capture were entitled, on their application, to be made co-parties as captors in the suit. After entering the decree of condemnation of the prize property before mentioned, proofs were brought before the prize commissioners, upon an order of reference to them, to determine what vessels were entitled to share in the distribution of the proceeds of the prize property; and upon the coming in of the report of such proofs by the prize commissioners, October 13, 1862, the court admitted the Kittatinny as one of the capturing vessels, and on the same day the decree of distribution conformably thereto was made and signed by the judge.

It appeared from the report of the commissioners that E. C. Benedict, esq., appeared before them as counsel for the officers and crew of the Kittatinny, and conducted the proceedings in support of their interests, and had also appeared in court on their behalf, upon the hearing on the merits, but took no part in the oral discussion of the case in court.

Upon the representation to the court by Mr. E. C. Benedict, on the part of the firm of Benedict, Burr & Benedict, proctors, that the other officers of the court concerned in the suit before named had obtained a taxation of their costs for services rendered in the suit, and that their firm had received no notice from either of them, or from the court, of the time or place of such taxation, and that allowances of costs to such officers were made, on such taxation, to the prejudice of the parties they represent, and that the whole proceeds of the condemned property adjudicated upon in this suit are about to be disbursed to the captors, after deduction therefrom of the allowances taxed as aforesaid, and without any compensation being reserved to those proctors for their services in the suit, he moved the court for an order rescinding such former taxations, and that such taxation shall be opened for review and rectification, and that the costs justly due and allowable to their firm in the cause be also taxed and adjusted by the court, and be deducted from the gross proceeds of the prize, before they are paid over to the libellants.

Several considerations of weight, both of practice and legal rights, are involved in this application.

It is, under all circumstances, a most irksome and perplexing service imposed upon courts of justice, to measure and determine the rate of compensation to be allowed their officers, especially if not fixed by law, or if left in any degree to the unrestricted discretion of the court.

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The struggle between the demands for large allowances on the part of officers, and for severe restrictions and limitations to rates of compensation by those to be charged with the payment, are always embarrassing and vexatious, when no other rule is prescribed by law than the judge's appreciation of the character and value of the claims to be assessed and adopted; and most essentially so if the charges are constructive in character, and are claimed for services not rendered in the presence of the court. In prize cases, there is superadded a difficulty rarely presented in other instances—that the compensation of the officer is to be provided by assessing annually on each suit its individual proportion of the yearly allowance or salary payable to the officer for services rendered within the same year the suit was pending; that is, all the suits in prosecution during the year must each be taxed upon the amount recovered in it a common proportion of the costs (limited compensation to all but to counsel for captors) earned by the officers during the year. So that, by the laws as they stand, the district attorney, the marshal, the clerk, and the prize commissioners, are prohibited receiving beyond fixed sums to each for a full year's service, and no rate or rule of taxation in respect to costs to counsel for captors is given; and, by other statutory provisions, the proceeds recovered in prize cases, after the deduction of costs, are allotted to the pension fund for seamen and to the captors. The counsel for prize captors are entitled to receive costs, together with the officers above specified, out of such proceeds recovered. The Secretary of the Navy has, under the law of July 17, 1862, sec. 12, employed F. H. Upton, esq., as counsel to act for captors in all prize cases in this district, when the captors do not appoint counsel, to assist the district attorney and protect the interests of captors, with such compensation as he may think is just and reasonable.

In this case, it appears that the copartnership of Benedict, Burr & Benedict were appointed proctors by the officers and crew of the schooner Kittatinny, and acted in that capacity, with the district attorney and the general counsel for the capturing ship named in the libel, in conducting the legal proceedings in the cause, up to the coming into court of the report of the prize commissioners, upon which it was decreed that that vessel was co-operating with the De Soto in the capture of the schooner Major Barbour.

It also appears that no notice was directly given to the Messrs. Benedict by the district attorney, or to any other of the officers of court claiming costs in this suit, of the time and place of the tax-

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ation of their own costs in the case, or that the Messrs. Benedict should produce and have taxed their own therein, and that the costs of the other officers were taxed by the judge, and that the Messrs. Benedict have just acquired knowledge of the fact, and that the marshal, after paying such taxed costs, has remitted the residue of the proceeds in his hands to the United States treasury.

The Messrs. Benedict, on notice to the other officers whose costs were taxed, as above stated, apply now for an order, that the costs taxed to the prize commissioners, the district attorney, the marshal, and Mr. Upton, the other counsel for the captors in this cause, be rescinded, and that all the costs heretofore taxed be re-examined and re-taxed by the court, and also that costs to them as proctors for the ship's company of the schooner Kittatinny be taxed in their behalf, and be ordered to be paid out of the proceeds of said prize in the treasury.

This motion is resisted, on the part of the district attorney and the counsel for the other captors, because the matter is now out of the authority of the court, the proceedings being terminated in this court, and the moneys raised in the suit having been paid over by the marshal, and being no longer subject to the control of the court. No objection is made by the counsel for the other officers that a re-examination and re-taxation of all the costs awarded them in the case should be made, provided the court now possesses any power over the funds.

No costs were allowed on the taxation by the court, except upon the express assent of the counsel representing the libellants, and no item forbidden by law was sanctioned by the court; but it is palpable that the aggregate amount is large, and that many charges were allowed upon evidence which the captors, represented by the Messrs. Benedict, would be rightfully entitled to discredit, by cross-examination or other testimony, had application been made in time therefor.

But it appears to me that the present motion must be denied, inasmuch as all judicial power over the matter by this court is determined, and no effectual relief can be afforded the promovents, unless by revoking the final decrees rendered in this cause, the last of which was signed and recorded in October last, those decrees having definitively passed upon the question of costs recoverable, upon the evidence then before the court. Although the prize court is virtually open every day, yet its course of practice, its regular terms for returns of process, and its other judicial action, are all in conformity with procedures in the court of admiralty proper, and, after the lapse of the term in which

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a decree is rendered, all authority to revoke or alter it is extinct in the court which rendered it. (*The Martha*, 1 Blatch. & How., 171; *The United States v. The Brig Glamorgan*, 2 Curtis C. C. R., 236.) The power of the court in the case ceases with the term in which its decree is made. (*The United States v. Hogsheads of molasses*, 1 Curtis C. C. R., 276.) Courts of law and equity are governed by the same doctrine; (*Hudson v. Guestier*, 7 Cranch, 1; *Whiting v. The Bank of the United States*, 13 Peters, 6, 13; *Washington Bridge Co. v. Stewart*, 3 How., 424; *The Bank of the United States v. Moss*, 6 Id., 31;) and in admiralty, the power of the court to set aside defaults is restricted, even during the sitting of the same term, to ten days after the decree. (Supreme Court Rule 40.)

The final action of the court in this suit having been perfected in October term last, and, in respect to the allowance of the costs referred to, in terms prior to the present one, the decision cannot be disturbed or reviewed here in the present term of January.

The counsel is no doubt entitled to have his costs taxed against his own clients in case he shall pursue his remedy at law against them personally; but I possess no judicial competency to issue any compulsory order which will have effect upon the Treasury Department, other than such as may go with the final decrees already rendered in this suit.

It is proper, however, to observe that the counsel who were joint co-actors with the district attorney and the counsel for the capturing ship named in the libel must necessarily be deemed cognizant of the proceedings common to all parties in progress before the court up to the final termination thereof, and of the legal necessity of having their own costs taxed and embraced within the decree of the court, and also of opposing all improper allowances to other parties previous to the rendition of such decree, and that, accordingly, no error or irregularity was committed by the court in signing the final decrees without including within them the costs which such counsel could legally charge and claim in their own behalf, or which they might have prevented being allowed to other parties, had they appeared and opposed the sanction of them before the authority of the court in the case had terminated. Had that degree of vigilance been exercised, no doubt the court would have required, in relation to the costs of all parties, that there should have been the fullest practicable opportunity given to all interested in the suit, to secure, on the taxation of costs, the enforcement of every proper allowance, and the exclusion of any not clearly



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sanctioned by law and justice. But it is not to be overlooked that, since the act and joint resolution passed by Congress July 17, 1862, the court has no longer the function of taking charge of prize proceeds or disbursing them, nor affixing the sum of costs payable out of them, except in the special instance of the counsel for the captors, but that, on the contrary, the proceeds go in gross into the treasury, and the costs to the marshal, the district attorney, and the prize commissioners are paid from the treasury under the restriction that these officers shall obtain no more from the entire proceeds for a year's service than the fixed sums therein specified; and no rule is furnished or intimation given by the law by which the court can determine what proportion of the sum of prize proceeds paid into the treasury in this suit (\$44,167 76) shall be assigned towards the yearly allowances of the district attorney, marshal, and prize commissioners, or the other expenses of the suit, nor but that the whole amount of proceeds may be required to satisfy such liens for costs.

Enough has been stated in the preceding suggestions to show that the application made on the part of the promovents cannot prevail. The motion to open the decrees of the court and re-tax the costs in this suit, and to tax and enforce the costs of the movers against the fund in the treasury, is accordingly denied.

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THE STEAMER SUNBEAM AND CARGO.

Where it is claimed that a vessel was compelled to attempt to enter a blockaded port by an overwhelming necessity, arising from injuries received at sea, and the loss of fuel, water, and provisions, the burden lies upon her to establish the necessity.

Ignorance of the master as to his cargo, and as to any of it being contraband of war.

False destination on the vessel's papers.

Vessel and cargo condemned for an attempt to violate the blockade and to supply to the enemy articles contraband of war.

(Before BETTS, J., January, 1863.)

BETTS, J.: This vessel was captured September 28, 1862, at sea, off New Inlet, North Carolina, by the United States man-of-war State of Georgia, and was brought into this port for adjudication. A libel was filed against her October 17 thereafter, and an attachment and monition were issued thereon, returnable on the 4th of November, demanding the condemnation of the vessel and cargo. Due service was made of the process, and the return was filed in court by the marshal November 4, 1862. On the same day Mr. Archibald, the British consul, resident at this port, intervened officially for the owners of the

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vessel and cargo, as being British subjects, and claimed the prize as their property. The proctor for Mr. Archibald also interposed, December 30 thereafter, a claim on behalf of Joseph Greenwood, of England, through his attorney in fact, as the owner of eighteen bales of worsted stuff goods captured on board the said vessel, asserting that they were lawfully shipped as his sole property on a voyage from Liverpool to Matamoras, in Mexico. He also denies in his claim that they were subject to the control of the master of the vessel, and avers that the consignment was in the sole charge of the agent and attorney in fact of the claimant, and further denies that they were lawful prize of war. Although these claims are amplified as pleadings, for the purpose of including other matters, they can only enure to effect a general issue of prize or no prize.

On the 27th of December, 1862, Henry Lafone, also a British subject, resident in England, intervened, by his attorney in fact, (with leave to file his claim as of the return day of the process, November 4, 1862,) and claimed to be sole owner of the vessel and of the whole of her cargo at the time of her seizure. The test oath to this claim is subscribed and sworn to by the attorney in fact.

The vessel was British built, and was registered at London, January 19, 1858. Her shipping articles were dated at the same port, August 1, 1862, for a voyage from Liverpool to Halifax, thence (if required) to any ports and places in British North America and the United States, the West Indies, the Bahamas, and Matamoras, and back to a final port of discharge in the United Kingdom, not exceeding twelve months. On the 1st of August, 1862, the vessel cleared from Liverpool for Halifax, with a bill of health, for a voyage to Matamoras, and at Halifax, on the 6th of September, 1862, she took a further clearance for Matamoras. The outward manifest of the cargo from Liverpool represented it all as deliverable to order at Matamoras, except one consignment of casks of hardware deliverable there to named consignees. A very large proportion of the shipment consisted of military supplies, equipments, and materials, and was contraband of war, in character, if destined for any rebel port in the southern States or for the use of the enemy. The vessel sailed from Halifax September 14, and was captured on the 28th of the same month, about a mile off Cape Fear inlet, North Carolina, early in the morning, heading directly into the port of Wilmington. She was arrested by the United States blockading squadron stationed at that place. The prize did not approach the vessels when first descried from them,

or make any signal of a desire to speak them, but endeavored to avoid them, until she was brought to by repeated shots directed by them against her, and so near by as to put her in imminent danger, and once to actually hit her.

The lawfulness of the capture is resisted by the defence by the usual exceptions taken in like suits to the competency of the court to take cognizance of the alleged cause of capture: 1. That no lawful blockade existed. 2. That the claimants had no legal notice of it. 3. That the captured vessel was neutral property, destined to a neutral port, with a lawful cargo on board. And it is finally and most essentially insisted, with urgent earnestness, that the proximity of the vessel to Wilmington, the place of her seizure, was caused by her perilous condition at the time, brought about by stress of weather, and by her necessity therefrom for immediate succor; that she had been compelled to deviate from the voyage she was prosecuting on encountering a violent gale of wind at sea, which disabled her equipments, destroyed her coal and water and provisions, and drove her to seek the nearest and most instant relief in port.

The entire evidence shows the vessel to have been arrested close in shore, heading directly into the port of Wilmington, then watched and beleaguered by a strong United States naval force; and, accordingly, the only question demanding consideration in the case is, whether the excuse of necessary deviation set up by the defence is credibly supported by the evidence produced in the cause. The legal questions put forward by the claimants have been so repeatedly adjudged by the court during the progress of prize suits through the court during the past year that it will be of no service to repeat the reasons on which those decisions were founded. This case will, accordingly, be determined on the assumption that Wilmington was at the time of this capture under a state of legal and efficient blockade by the United States; that the master and owner of this vessel and cargo had notice and knowledge of such blockade; and that there was nothing in the fitment, ownership, or destination of the vessel or cargo which affords to either any exemption in law from arrest for the cause alleged in the libel. The case then resolves itself into a question of fact alone—whether the vessel was, when seized, pursuing an honest voyage, according to the representations on her papers, or was really fitted out for trade with the enemy, and was attempting to enter the port of Wilmington, North Carolina, with intent to evade the blockade then in force there. This inquiry is to be answered by a just applica-

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tion and appreciation of the facts and circumstances put in evidence before the court on the hearing of the case.

The position of the vessel immediately at the mouth of the harbor, at an early hour of the morning, (she having run during the night, under steam, close along shore,) and her shaping her course for its entrance, are facts stated plainly in the proofs. This situation is sought to be justified by her condition of distress, and by the allegation that she was compelled to make the harbor because of injuries received at sea, and the loss of fuel, water, and provisions in consequence. If that justification is not made out by the proofs, the culpability of the act is most palpable. The burden of proving the existence of the overpowering necessity alleged by the defence is cast by law upon those who set it up.

The first criminating act directly affecting the voyage from Halifax occurred in the deviation the vessel made from the true course of her declared voyage towards Matamoras. The time, place, extent, and cause of the deviation are not given with satisfactory uniformity or clearness by the witnesses who testify to the occurrence, and to many of them the fact that the regular course had been departed from was not known until the capturing vessels came in sight and were pursuing her. Some of her crew, the evening preceding, when her sails were being furled, supposed that her voyage to Matamoras had been completed by the arrival of the vessel at that port, and were unaware she had turned out of her course until they found she was trying to enter Wilmington. The second mate says that the vessel was sailing, to the time of her capture, towards Matamoras, so far as he knew. Two logs were kept on the ship—one the ship's log, and the other by the first engineer of the vessel. The narrative of the gale, or hurricane, as it is denominated, is described in sufficiently strong terms as to its suddenness and violence, in the two logs, but neither one specifies its duration, or what, if any, injuries to the ship, her tackle or lading, were experienced from it, or whether the navigability of the vessel was in any way arrested or impeded by it. This gale came on, as would appear by the entries, early on Saturday morning, the 19th of September; and the engineer's log represents that his part of the vessel, which was most affected by the storm, was entirely cleaned up and relieved from its effects the next day, Sunday. Yet it was on the 28th, eight days afterwards, that she was attempting to get into Wilmington. The evidence also shows that the steam functions of the vessel were only used as an aid to her navigation, and generally only

in leaving or making port, or in approximating land. Otherwise, sails were the general propelling power employed during the voyage. It is not proved that the capacity of the vessel to continue her course was at all interrupted by the occurrence of the storm, or that her safety or her sailing qualities were in any way impaired or endangered. But the more material fact is, that no note is entered in either log that the vessel changed her direction because of the storm, or that distress or peril of any kind on board rendered a deviation necessary. Indeed, the log shows that the vessel held about a uniform course of southwest, or southwest-by-west, or southwest-by-south, during the 16th, 17th, 18th, and 19th of September, retaining the general bearing, and under a northeast wind standing towards the coast up to the time of this gale; and no suggestion is entered on either log that the vessel was off the proper course to Matamoras, or was driven by the storm from the one she meant to pursue. The entries on the vessel's log from the 20th of September, the day after the storm, during the 21st, 22d, 23d, 24th, 25th, 26th, and 27th, when the log ends, note the vessel as running the same general southwesterly direction, with a northeasterly wind, down to her capture. The proofs *in preparatorio* also are that the true course was adhered to until the day previous to the capture. The master testifies that he was heading the ship right on the land when the gun was fired to bring her to; that he was then actually within a mile of being inside the port of Wilmington; that this was about 5½ o'clock a. m., on a dark, rainy morning; that after the gale of the 19th of September, which did the vessel some damage, he beat along down the coast; and that on the evening before the capture he altered the vessel's course and stood in for Wilmington. Other witnesses prove that three shots were fired, one of which hit the Sunbeam before she came to and surrendered, she having got under the guns of the enemy's fortifications, which opened fire for her protection.

I shall not, however, further pursue the analysis of the proofs *in preparatorio*, to demonstrate that the statements made by the officers of the vessel are reserved, inconsistent, and unreliable, with respect to the prize and her doings from Halifax to Wilmington. The chart taken on board the vessel, having delineated on it carefully the route she pursued from Cape Sable to Wilmington, with her progress day by day distinctly entered, and evidencing great care and accuracy in keeping the record, proves, beyond all reasonable doubt, the subterfuge and falsity of the pretence that the vessel was disabled in her navigation by the storm of the 19th and 20th of September. It more-

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The Sunbeam.

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over demonstrates that the Sunbeam, at the time of the storm, deviated at right angles from the course she was then running, broad on towards the coast, and continued in that new direction for at least one degree of longitude; that then, in about the latitude of Montauk,  $41^{\circ}$  north and longitude  $69^{\circ}$  west, she bore off at right angles, parallel to the preceding course from which she had deviated on the 19th; that thence she pursued her way southwardly along the coast, registering on the chart day by day the line and relative distance of her movement, the general trending of it being inland, and more decidedly so on the 25th of September, when she arrived opposite to Albemarle sound, somewhere between Currituck Inlet and New Inlet. Thence her bearing, during the two succeeding days, was more broadly upon the coast. The delineation and registry of the course terminated on the 27th of September, near the point of her capture on the morning of the 28th, where she met and was seized by the blockading squadron. This record, made evidently by the navigator of the vessel with marked care and intelligence, supplies to my mind most persuasive proof that the line of navigation followed after the storm was not induced by any physical necessity in respect to the vessel, her equipments or her crew, but was wholly voluntary and in fulfilment of the plan and purpose of the voyage from its outset.

As before intimated, the log of the vessel supplies no facts calling for or excusing the wide departure of the vessel from the destination which the claimants allege to have been the true voyage contemplated. Indeed, no evidence is given that the direction of the vessel, at the commencement of her course near Cape Sable, was the usual and proper one for a voyage to Matamoras; and if, of itself, it imports no positive fault that her direction was so significantly landwards, it would at least seem to demand from the officers of the ship an explanation of the reasons or rules of navigation which rendered such position and bearing suitable and proper. The diagram of her actual movements, as above referred to, affords a strong suspicion that the actual destination of the vessel was to some port north of Cape Florida. That suspicion is augmented on the production of the maps and charts found on board of the vessel. She had a general English chart, including only the United States ports on the west side of the Atlantic, and two American charts from the United States Coast Survey—one from Cape Fear to St. Catharine's island, and the other from Albemarle sound to Cape Fear. There is, *prima facie*, a flagrant improbability that a vessel of this burden, complement of crew, and cargo,

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The Sunbeam.

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would be despatched from Liverpool on a destination to Matamoras, in Mexico, supplied with no nautical guide, by map or chart, and without being in charge of navigators personally familiar with that portion of the route independently of the aid of such guidance. The ignorance of the master in respect to the lading of the vessel, and to whom or for whom any part of it was being transported, gives ground for suspicion that there is studied reserve or false representation as to the real state of facts in relation to the lading and condition of the vessel, and the actual aim and business of her voyage, and that these were well known to the officers on board, and were concealed in the vessel's papers and in the proofs *in preparatorio*. It is singular that the master only knew of there being one gun and two rifles on board, whilst the mate, the engineer, and others, knew that she brought four mounted cannon from Liverpool, and had them on deck until the storm, when three of them were thrown overboard by the crew, or, as some of the witnesses suggest, were blown overboard by the tempest. It is, likewise, in a degree remarkable that the master had no knowledge that the vessel was carrying any cargo that would be contraband of war, if intended for an enemy port, excepting one hundred and forty tons of gunpowder and some brandy, lead and shoes; whereas, on the breaking up of her cargo by the order of this court, she was found also stowed with nine cases of swords, four hundred and ninety-seven boxes of fixed ammunition, five boxes of percussion caps, fifty cases of Enfield rifles, large quantities of pig-lead, and one hundred and thirty-nine boxes of boots, besides other materials manifestly destined for military uses.

It seems, also, to be doubtful, upon the claims filed, who is the true owner of the prize property. Lafone interposes and files his test oath, swearing that he is the owner of the vessel and the entire cargo; and Mr. Greenwood also claims, under a like test oath, to be the sole owner of eighteen bales of woollen stuff goods—a portion of the cargo; the two claims evincing a want of that clear discrimination of title to property which is rightfully to be expected in the contestation of a suit prosecuted against it for being unlawfully transported to an enemy port, in violation of the belligerent rights of the libellants.

Besides, I think that the proofs bear hard to show that the allegation of distress or peril set up as justifying the open deviation of the vessel from a destination to Matamoras is groundless and false, inasmuch as other vessels came in sight after the storm of the 19th of

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The Levi Rowe.

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September and were not spoken, nor was any signal displayed by the Sunbeam denoting that she was in distress, and she proceeded through several degrees of latitude southerly, down the coast, within a distance rendering it easy for her to have gone into open ports had there been real cause for her to seek relief therein. Without entering into an elaborate analysis and discussion of the numerous particulars in proof, I find, as the result of my consideration of the case, that the representation of the voyage of the Sunbeam stated in the vessel's papers, and on the preparatory examination, to have been from Halifax to Matamoras, was simulated and illusive in point of fact, and that the true object of the voyage was to proceed from Halifax to a blockaded port in one of the seceded States, and to deliver there the cargo to the use of the enemy, and in violation of the blockade there existing.

I am satisfied that the evidence in the cause naturally leads to and demands such conclusion; and I therefore pronounce for the libellants, that the vessel and her cargo be condemned and forfeited for an attempt to violate the blockade of the port of Wilmington, North Carolina, wilfully, and well knowing of such blockade, and to supply to the enemy articles contraband of war.\*

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THE SCHOONER LEVI ROWE AND CARGO.

There being probable cause, on all the evidence, to believe that the vessel was engaged in an attempt to violate the blockade, the court suspended a final decision, with leave to the libellants to put in further proofs as to the place at which the capture was made, and as to the purpose of the voyage, at any time within one year.

(Before BETTS, J., January, 1863.)

BETTS, J.: The libel alleges the capture as prize of this schooner at sea, six miles from the coast of North Carolina, by the United States gunboat Mount Vernon, November 29, 1862, and that she was thereupon brought into this port for adjudication. The suit was instituted December 17, 1862. Process of attachment and a monition were issued from the court on the same day and were duly returned by the marshal January 6, 1863, and after proclamation made in open court, no appearance being given thereupon, a decree by default was, on motion of the district attorney, regularly entered against all persons having any interest in the aforesaid prize, and the vessel's papers and the preparatory proofs were submitted to the court by the district

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\* This decree was affirmed, on appeal, by the circuit court, July 17, 1863.



attorney, who moved the consideration and judgment of the court upon the same.

The vessel's documents are a certificate of British registry issued to Joseph Eneas, of New York, as owner, dated at Nassau, New Providence, September 21, 1861; a shipping agreement made at the same place November 10, 1862, for a voyage to Beaufort, North Carolina, and back to Nassau; a clearance at the same place the same day for Beaufort aforesaid, with a cargo of ten barrels of oranges and two thousand four hundred bushels of salt; also a log-book. The President's proclamation of May 12, 1862, and the circular of the Secretary of the Treasury thereunder of the same date, and a license granted to the vessel at Nassau November 11, 1862, legalized the above-mentioned voyage, and exempted the vessel from liability to seizure for trading with or entering the port of Beaufort, North Carolina. A charter-party, executed by Sawyer & Menendez, as owners of the vessel, to James M. Taylor, was found on board of her, dated at Nassau November 11, 1862, for a voyage to Beaufort, North Carolina, thence to New York and back to Nassau. The master of the vessel and all persons concerned in the voyage knew that the ports of North Carolina, except Beaufort, were under blockade. The master testifies that the vessel was thirty-five miles south of Beaufort and ten miles from land on the North Carolina coast, when captured. Taylor, the supercargo, the only other witness, gives about the same testimony as to the time and place of capture. Both of them fix the distance to be about thirty-five miles from Beaufort, but neither of them names the place nearest which she was captured. They both assert she was steering for Beaufort, and not sailing towards the land and away from the Mount Vernon. The prize-master testifies, in his deposition verifying the arrest and the papers taken from the prize, that the vessel was, when captured, standing directly into Topsail inlet, about six miles off shore. The log-book makes no mention of the capture or of the position of the vessel at the time of her arrest, nor does it enter the proceedings of the vessel on the 28th of November, the day of her seizure. The master testifies that the arrest was made about noon of that day.

The testimony of both of the witnesses shows that the vessel and the lading were considered by them to be the property of Sawyer & Menendez. No proof exists on the papers that a title to the vessel ever passed to them from her American owner; but whether she was owned by them or by Eneas, the American proprietor, any attempt

## 858 Bales of Cotton, &amp;c.

to evade the blockade at Topsail inlet would be illegal, and would subject her to condemnation. There is a palpable reserve in the log and in the statements of the witnesses examined *in preparatorio* which, connected with the circumstances surrounding the voyage, affords probable cause for the belief that the vessel was engaged in an illicit adventure, and this is so strongly made out that I shall suspend a final decision in the case, with leave to the libellants to put in further proofs as to the point or place at which the capture was made, and also as to the purpose of the voyage at any time within one year after the entry of the decree on this decision.

#### EIGHT HUNDRED AND FIFTY-EIGHT BALES OF COTTON AND OTHER PROPERTY.

Property captured as prize at Newbern, North Carolina, having been shipped to New York by the captor on board of a merchant vessel on freight under a bill of lading signed at the time, conditioned for its delivery at New York on payment of the freight therein stipulated, the court ordered the freight to be paid by the marshal out of the proceeds of the property in court.

On general principles, property captured as prize belongs in law to the government, and is chargeable with the same liabilities as if it had been owned by individuals and had been benefited under contracts direct or implied.

The United States, in relation to the proprietorship of property, have in their public capacity like authority and remedies and are subject to like liabilities in dealing with it through legal agencies or otherwise as natural persons, except, perhaps, in respect to the operation of laws of limitation or rules resting upon usages under the law merchant.

(Before BETTS, J., January, 1863.)

The United States and Captors *v.* Eight hundred and fifty-eight bales of cotton, brought on freight from Newbern, North Carolina, to the port of New York, as prize property, on board the schooner Clifton; The same *v.* One hundred and twenty-one barrels of oil, one thousand three hundred and thirty-one barrels of resin, pitch, and turpentine, and two hundred and fifty-seven casks of resin, transported as aforesaid on board the schooner Palmer. It being satisfactorily proved in each of the above-entitled causes that the vessels therein named were not at the time of the lading and affreightment on board them of the merchandise above mentioned, in the employment of or under control of charter-party with the libellants, and bound to receive and transport the said merchandise from Newbern, North Carolina, to the port of New York or any other port or place for the libellants, except by virtue of the bills of lading and affreightment executed to the shipper of the goods at the time and set forth in these proceedings, and it appearing to the court that the said loadings were shipped under bills of lading signed

at the time, conditioned for their delivery in this port on payment of the freight therein stipulated, it is, therefore, considered that the said cargoes, notwithstanding the same were prize goods remitted to this port for the benefit of the libellants and for the purpose of adjudication in the prize court of this district, are legally and justly subject to the payment of freight according to the terms of the said bills of lading. Wherefore it is ordered by the court that a true computation of said freight be made and stated, and that thereupon the marshal pay the same to the claimants out of the proceeds of said goods in court, as part of the expenses and charges to which the same are legally and justly liable and subject.

BETTS, J.: The above order is made in the before-named suits, upon facts entirely distinct from the case of *The Undertaker's cargo*, decided in the Massachusetts district, November 18, 1862, the vessels which transported the prize cargoes in that case being under demise to the United States, and compensated in sums in gross for the whole period of their service.

On general principles, property captured as prize belongs in law to the government, (*The Dos Hermanos*, 2 Wheat., 76; S. C., 10 Id., 306; 3 Phillimore's Internat. Law, 189, § 128; *The Elsebe*, 5 Ch. Rob., 173.) and is, accordingly, chargeable with the same liabilities as if it had been owned by individuals, and had been benefited under contracts, direct or implied. Commodore Rowan, of the United States navy, the captor of this prize, was a competent agent of the United States to bind them, as owners of the property, to a fulfilment of this contract for its carriage. The United States, in relation to the proprietorship of real or personal property, have, in their public capacity, like authority and remedies, and are subject to like liabilities in dealing with it through legal agencies, or otherwise, as natural persons, except, perhaps, in respect to the operation of laws of limitation, or rules resting upon usages under the law merchant. (*The United States v. Tingey*, 5 Peters, 115; *The same v. Bradley*, 10 Id., 343; *The same v. The Bank of the Metropolis*, 15 Id., 377; *Dungan v. The United States*, 3 Wheat., 472; *Neilson v. Lagow*, 12 How., 98; *The United States v. Barker*, 12 Wheat., 559; *The same v. The Bank of the United States*, 5 How., 382.)

The order to the marshal to pay the applicants the amount of freight due in the above suits will be entered as above indicated.

## THE SCHOONER FLORIDA AND CARGO.

Vessel and cargo condemned as enemy property, and for an attempt to violate the blockade. A false destination and a false ownership of the vessel were alleged on her papers.

(Before BETTS, J., February 26, 1863.)

BETTS, J.: The libel charges that this vessel and cargo were captured, as prize, by the United States vessel-of-war Matthew Vassar, January 11, 1863, at sea, near Little River inlet, off the coast of South Carolina. The prize was arrested in this port, in the hands of the prize commissioners, by the marshal, on process of attachment and monition, February 2, 1863, and his return of the process, with certificate of due service and of public notice, was made and filed in court February 24, thereafter; whereupon, on motion of the district attorney, a decree of default was rendered against the prize and all persons interested therein.

The proofs returned by the prize commissioners consist of depositions *in preparatorio*, given by the master and the mate of the vessel, and also the ship's papers found on board of her at the time of her capture, identified by the testimony of the prize-master.

The vessel, when arrested, was carrying the British flag, and had a certificate of British registry, dated at Nassau, N. P., December 4, 1862, to R. N. Menendez, of that place, indorsed January 2, 1863, as transferred to H. R. Saunders, of that place, merchant. The clearance was for Beaufort, N. C., then an open port, and the vessel was arrested while running into Little River inlet, a blockaded port on the North Carolina coast. The master testifies that he was the owner of the vessel and of all the cargo; that he bought the vessel in Nassau from the firm of Sawyer & Menendez, in December, 1862, and she was delivered to him there by one of that firm; that he is a native of North Carolina, and resides in that State, from which he came to Nassau the same month; that he knew that the ports of North Carolina were under blockade, and that the one he was attempting to enter was so at the time of the capture; that his real voyage was from Nassau to any port of North Carolina he could get into, and thence back to Nassau; and that the vessel was American-built.

It is unnecessary to pursue the detail of testimony further. The adventure was a flagrant, undisguised effort to break the blockade and carry on an illicit trade with the enemy, with property belonging wholly

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The Mercury.

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to an enemy, and under papers representing a false destination and a false ownership of the vessel.

A decree of condemnation and forfeiture of the vessel and cargo is ordered to be entered.

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## THE SLOOP MERCURY AND CARGO.

Vessel and cargo condemned for a violation of the blockade, and as enemy property.

(Before BETTS, J., February 28, 1863.)

BETTS, J.: This vessel, with a cargo of spirits of turpentine, was captured as prize January 4, 1863, coming out of Charleston harbor, by the United States ship-of-war Quaker City. The cargo was sent to this port for adjudication, and regularly arrested here, by warrant of attachment, January 30 thereafter. The marshal duly returned the process February 17 thereafter. No one appearing on the return and proclamation to make defence, a judgment of default and condemnation was then duly entered, upon motion of the district attorney. No ship's papers were found on board of the vessel.

The owner of the vessel, her mate, and one passenger were examined as witnesses *in preparatorio* before the prize commissioners. The facts proved by the testimony are, that the vessel and her cargo of turpentine were both the entire property of the witness, the owner, who resided in Charleston, and avowed, on oath, his citizenship, and denied all allegiance to the United States government. He purchased the vessel and her cargo in Charleston immediately previous to her leaving port on this voyage. He knew of the blockade of the port. She had attempted to come out once unsuccessfully previous to her capture, and was captured in or near the harbor of Charleston as she came out of it on a voyage destined to Nassau, New Providence, and back to Charleston. A mail on board, which she was carrying to Nassau, was thrown overboard. The owner avers that she raised no flag because she had none on board, but that he would have carried a confederate flag had he possessed one, and would have resisted the seizure by force had he been armed. The mate testifies that the capture was made in Charleston harbor, January 4, between two and three o'clock in the morning.

The vessel was on her arrest taken to Port Royal, and, under an appraisement and survey, by order of Admiral DuPont, was appro-

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The Wave.

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priated to the use of the United States naval service on that station, at the valuation of \$200.

Let a decree be entered for the condemnation and forfeiture of the vessel and cargo to the libellants.

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THE SLOOP WAVE AND CARGO.

The vessel was, after her capture, appropriated to the use of the United States, and was not sent into port. Her cargo was sent in by another vessel, and was arrested in this suit. None of her company were sent in as witnesses. A person present at the capture was, by order of the court, examined as a witness.

Cargo condemned for a violation of the blockade.

Vessel discharged for want of legal arrest and prosecution.

(Before BETTS, J., February 28, 1863.)

BETTS, J. : The vessel and cargo above mentioned were captured, as prize, June 27, 1862, in Mississippi sound, by the United States brig Bohio ; and the vessel not being deemed seaworthy, the captors transmitted the cargo found on board of her to this port for adjudication. On the return of process of attachment against the cargo, September 2, 1862, the United States attorney moved for and obtained a decree by default condemning the same as forfeited. He also, on July 29, applied for and obtained, for cause then shown, an order of the court to examine Dewitt Kells, a person present at the aforesaid capture, but not one of the company of the said prize vessel, as a witness *in preparatorio* in this suit. That examination was accordingly made by one of the prize commissioners July 31, 1862, and filed September 9 thereafter, and is now submitted to the court, and final judgment of condemnation and forfeiture of the said sloop and her cargo, as prize, is prayed by the United States attorney thereupon.

The witness testifies that the capture was made as alleged in the libel ; that the prize was immediately thereupon, by the order of senior officer Hitchcock, of the *Susquehanna*, appropriated to the use of the gun-brig Bohio, and was never brought into this port ; that the cargo seized was, by order of the said Hitchcock, transported to the prize-steamer *Anne*, and brought to the city of New York ; that the seizure was made because the vessel and cargo were confederate property, and were bound from Mobile, a blockaded port, to Pascagoula, an enemy's port ; that the capture was witnessed by him ; that there were only four persons on board of the captured vessel ; that they were of a low class, and were not brought to this port ; and that Pas-

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The Reindeer.

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cagoula was a place then under blockade. No papers were found on board of the captured vessel.

The return made by the marshal, on the warrant of attachment, is, that he attached the *Wave* and her cargo. This, on the proofs, was clearly only so as to the cargo, which was present and within the reach of the process; but the process could be served only symbolically on the sloop, as there is no evidence of an appearance in her behalf, nor is any legal proof furnished for omitting to bring to this port the persons apprehended with the vessel, nor that degree of proof adequate to show that she was enemy property, or had violated the blockade.

As to the cargo, that being held under actual custody by the court, the monition issued on such seizure, and legally served, and not replied to, furnishes *prima facie* evidence of the truth of the allegations made against it by the prosecution. That character of proof is augmented by the testimony of the witness present, that the cargo was captured by the libellants in the act of being transported from one blockaded port to another. The default is adequately sustained thereby, so far as to entitle the libellants to demand the full confiscation of the cargo.

The cargo is, accordingly, ordered to be confiscated, and the sloop is acquitted in the suit, for default of legal arrest and prosecution as to her. The case of *The United States v. The Joseph H. Toone*, in this court, (October term, 1862,) is in point, and presents the authorities upon which the decree in that case rested.

Let there be a decree for the forfeiture of the cargo, and the discharge of the vessel for want of prosecution.

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THE SCHOONER REINDEER AND CARGO.

Vessel and cargo condemned as enemy property, and for a violation of the blockade.

(Before BETTS, J., March 17, 1863.)

BETTS, J.: The above vessel and cargo were captured in the Gulf of Mexico, September 17, 1862, by the United States bark *William G. Anderson*, as prize, and put in charge of a prize-master, and ordered to this port for adjudication. On her passage to this place a survey was had upon the vessel at Key West, and, she being adjudged thereby to be unseaworthy, she was appropriated to the use of the United States, and her cargo was remitted here, and was arrested

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The Hetwan.

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by the marshal, on due process of attachment in this suit, which was returned as served, and filed in court February 10, 1863. The libel in the cause, filed January 19, 1863, alleges the vessel and cargo to be prize of war. No claim or answer was interposed in the suit, and on the 17th of February a decree by default was duly made in the case. On the part of the libellants a consent in writing was given and filed, February 23, 1863, that 73,533 pounds of cotton, parcel of the cargo, or its proceeds in court, if sold, should be remitted to James Millinger, or his agents or attorneys; upon which consent, a decree or order to that effect was duly made and entered in court on the 27th of February thereafter.

The testimony of the master, taken *in preparatorio*, proves that the vessel and cargo were owned by residents of the Confederate States, and that she sailed under the confederate flag, and under a clearance and a pass from confederate authorities, and was captured the day after she sailed from Galveston. She was consigned to Havana. She was built in Texas or Louisiana, and named the Jefferson Davis. The master altered her name to the Reindeer before commencing this voyage. No papers were found on board of the vessel when she was taken possession of on capture.

There is no ground for question, on the proof, that the vessel and cargo were enemy property, and that she sailed from Galveston with design to violate the blockade then imposed upon that port.

Decree of condemnation accordingly.

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THE SCHOONER HETWAN AND CARGO.

Vessel and cargo condemned as enemy property, and for a violation of the blockade.

(Before BETTS, J., March 17, 1863.)

BETTS, J.: In this, as in the preceding case, the cause comes before the court for adjudication solely upon the papers submitted on the part of the libellants. The libel avers the capture of the schooner and her cargo on the 21st of January last, at sea, off Charleston harbor, by a United States gunboat, as prize of war; that the vessel, being found unseaworthy, was appraised by a board of naval survey, and left at Port Royal, with the flag-officer at that port, for the use of the government, and that the lading on board of her was brought to this port, within the jurisdiction of this court. A warrant and a monition were here issued against the same, February 12, 1863, and were returned



by the marshal, duly served, March 3 thereafter, and a default, for want of appearance and answer, was taken publicly in court. Thereupon, upon the papers found on the schooner, and the proofs *in preparatorio* laid before the court, judgment of condemnation was prayed by the libellants against the cargo and the proceeds of the vessel in court.

The master, captured with the vessel, testifies, that he is a native and a resident of one of the Confederate States, and owes allegiance to those States; that he took possession of the vessel seized, in Charleston, and was captured in attempting to come out of that port with her, in violation of the blockade; that the vessel and cargo were owned by persons residing in the Confederate States; that the voyage was intended to be from Charleston to Nassau, N. P.; that the schooner left Charleston under a military pass from the confederate authorities; and that he knew of the war and the blockade, and was captured when heading out of Charleston harbor. The vessel had a permanent register, dated November 11, 1862, from the confederate authority at Charleston, to J. E. Hertz, of that place, and an invoice, bill of lading, &c., assigning the cargo to Adderly & Co.

From this statement of the evidence, it is palpable that the evasion of the blockade in this case was deliberately undertaken, and that the vessel and her cargo were the property of the enemy.

I accordingly decree the condemnation and forfeiture of the schooner and of all the lading on board of her.

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#### THE STEAMER ANNA AND CARGO.

Vessel and cargo condemned as enemy property, sailing under the enemy's flag, and under passes from the enemy.

(Before BETTS, J., March 26, 1863.)

BETTS, J.: The libel, filed March 5, 1862, alleges the capture of the steamer and cargo, as prize, November 22, 1861, in Mississippi sound, between Biloxi and Ocean. Spring, by the United States steamer New London. The vessel was appraised by a naval survey, December 26, thereafter, and appropriated to the use of the libellants, and the cargo was transmitted by another vessel to this port, for adjudication. A decree by default was rendered against both vessel and cargo, March 24, 1863; and the vessel's papers and the proofs *in preparatorio* have been laid before the court, to determine the liability of the captured property to confiscation.

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The Minna.

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The steamer was enrolled and licensed to citizens of the Confederate States, under the laws of those States, July 1, 1861, and was in the employ of such citizens when seized. The master testifies, on his examination, that the vessel was, when captured, sailing under the confederate flag, and had no other on board; that he is a citizen and a resident of a confederate State; that the vessel was engaged in trade between the ports of Pascagoula and New Orleans; that he was part owner of the vessel, and had an adventure in the cargo; and that he knew of the war and that those ports were under blockade. The witnesses examined, all of them, knew of the war and that those ports were under blockade.

It being thus demonstrated that the vessel and cargo were enemy property, sailing in the interest of the enemy, with the aid of passes from and protection of the flag of the enemy, the property captured is plainly prize of war; and, no defence being interposed, a decree of condemnation and forfeiture is directed to be entered.

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THE BRIG MINNA AND CARGO.

Vessel and cargo condemned for an attempt to violate the blockade.

The court will take judicial notice of the fact that the shipper at Nassau, a neutral port, of a cargo captured as prize, for an alleged attempt to violate the blockade, is a person who is shown by the records of the court to have been actively engaged in trading to and from the blockaded ports of the enemy.

(Before BETTS, J., March 26, 1863.)

BETTS, J.: A libel was filed in this suit March 2, 1863. The warrant of attachment and the monition issued thereon were returned by the marshal as duly served, on the 24th of the same month. A default was ordered therein by the court, and the ship's papers, with the proofs *in preparatorio*, and the proceedings in the suit, were, on the same day, submitted to the court for adjudication.

The libel alleges the capture of the vessel and cargo by the United States steamer Victoria, on the 18th of February last, at sea, near Beacon inlet, off the coast of North Carolina, and that the vessel and cargo are subject to condemnation and forfeiture as prize of war, and were sent to this port for adjudication for that cause.

There was found on board of the vessel, when seized, a certificate of British registry of the vessel, at the port of Quebec, to Thomas Norris, of that place, as owner, bearing date October 10, 1853. There are frequent changes of the command of the vessel indorsed on the

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registry, down to the date of November 20, 1860. The vessel had on board a clearance from the port of Nassau, for New York, dated February 10, 1863; bills of lading and invoices of the cargo, principally salt, shipped by Adderly & Co., of the same date, shipment and destination; also a letter of advice of like date, from the shippers to Messrs. Thomas & Holmes, of New York. No other papers relating to the voyage were produced from the vessel.

The master, the mate, the cook and one seaman were examined as witnesses *in preparatorio*, on the 2d and 3d days of March instant. The master says that he was put in command of the vessel and cargo at Nassau, by Adderly & Co., residing there; that she was captured about twenty miles southeast of Wilmington, N. C.; that the master and crew (nine in number) hired at Nassau about the middle of February last; that the lading was salt, copperas and drugs; that the voyage was to commence at Nassau, and end at New York; that he knew of no other destination; that he knew that Wilmington had been blockaded; that when he left Nassau he supposed it was in possession of the United States; that it was under blockade at the time the vessel was captured; and that when the vessel was arrested she was steering westerly, towards the land, the wind being north-easterly. The mate says that the vessel was captured about five miles from land, which was in sight; that he told the master the vessel was near land, but she was kept standing in; that he knew of the war and of the blockade of Wilmington, but does not know what information the captain had; that the course of the vessel was altered when the steamer was first discovered; that she then went about again, and stood in-shore, and then the master and crew abandoned her; that the captain ordered the vessel to be headed to the shore before he took to the boat; that he (the witness) does not believe the captain was bound on an honest voyage to New York, but believes he intended to run the vessel ashore and go on shore himself; that the captain ordered the wheelman to steer her for the shore; and that he (the witness) believes that the captain intended to run the blockade on this voyage. The cook states that the capture was made between seven and eight o'clock a. m., about five miles off shore, between Wilmington and Cape Fear, and that he knew that the coast was under blockade at the time.

This testimony presents the case of an English vessel procured for the alleged voyage by a house at Nassau, N. P., which house has been notoriously engaged with great activity, since the blockade has been

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imposed on the coasts of the Carolinas, in trading to and from the enemy ports in that vicinity, in violation of the blockade. That fact has been established by floods of evidence, so that the court cannot avoid judicially noticing its existence, any more than it can the proximity of that house and of its managers to the blockaded ports. (The *Apollon*, 9 Wheat., 374; *Peyroux v. Howard*, 7 Peters, 342.) They took the direction of this vessel, which had been previously registered in the province of Canada, and officered, manned, laded, and despatched her, without any documentary title to her or her services, and put her upon a voyage from Nassau to New York with a cargo brought from Canada to Nassau, passing by New York, and specially adapted to the markets and wants of the rebels, and containing nothing which appears to be of any particular demand or attraction in the New York market. They furnish no evidence of the circumstances and necessity of the voyage performed. They ran the vessel and cargo directly from Nassau across to Wilmington, and she was arrested heading in-shore, between Cape Fear and Wilmington. No log-book or memorandum is found noting the course of the navigation or the cause of it. When pursued by the capturing vessel the master and crew of the prize abandoned her in a boat, and attempted to make the shore themselves, and to have the vessel also run into the territory of the enemy. The mate testifies his belief that the vessel came on the coast with the intention of running the blockade. This is clearly the language and import of the whole transaction; and I am satisfied that the vessel was, when captured, navigated with the intention of violating the blockade, and is lawful prize of war.

Decree accordingly.

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THE SCHOONER ANNIE AND CARGO.

Vessel and cargo condemned for an attempt to violate the blockade.

(Before BETTS, J., March 26, 1863.)

BETTS, J.: The United States steamer *State of Georgia* seized this vessel and cargo February 24, 1863, at sea, near Little River inlet, off the coast of North Carolina. They were sent to this port for adjudication. A libel was filed, and a warrant of attachment and a monition thereon were issued and served on the same day. A regular default was moved in court, March 24, on the return of the above processes, for want of due appearance thereto.

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The papers found on board of the vessel on her arrest were a certificate of British registry, issued at Nassau, N. P., December 30, 1862, to John Christopher Rehming, of the same place, as owner of the vessel, she being of foreign build, to wit, of Massachusetts, United States of America; an assignment of ownership indorsed upon the registry, January 25, 1863, by Joseph Roberts, of the same place, with a registry of Samuel Hawes as master, of the same date; a crew-list, executed on the 20th of January by the said Hawes, as master, and others named, for a voyage from Nassau to Philadelphia, and back to Nassau; and a clearance, on the same day, to the same master, from Nassau to Philadelphia, with a cargo of 2,200 bushels of salt and a package of tea. No other papers were found on board, except a private letter of a family character, apparently addressed from Kemptville, January 27, 1863, to the care of Messrs. Sawyer & Menendez, Nassau, with the following paragraph in it: "I hope you will succeed in running the blockade." On filing in court an affidavit in the above suit, made by Isaac Halleck, an acting master's mate, attached to the United States vessel-of-war State of Georgia, that he was present at the capture of the above prize, that persons on board of her, when she was being pursued by the State of Georgia, abandoned her before her arrest, and that no person was found on her when she was apprehended, and on motion of the libellants, the court ordered that the examination of the said master's mate *in preparatorio* should be taken by one of the prize commissioners. The testimony of Halleck having been thus taken and duly returned to the court, it is made satisfactorily to appear, that on the 24th of February last the above named schooner Annie and cargo were captured as prize by the United States steamer State of Georgia, the witness being present; that when first discovered from the State of Georgia, the schooner was steering about southwest, under way, with all sails set; that her course was altered to the west, on the appearance of the State of Georgia in sight; that her crew all abandoned her at anchor in a boat, into which they seemed to transfer trunks or luggage; that the Annie and her cargo were seized off Little River inlet, on the coast of North Carolina, about a quarter of a mile from the land; that that coast was under actual blockade; that none of the crew of the prize were afterwards apprehended, so as to be produced in court as witnesses; and that the lading was chiefly salt.

Most plainly the schooner was wide of the ordinary course from Nassau to Philadelphia, and was caught in the act of entering a blockaded port. There is not a shadow of proof that she was on an inno-

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cent voyage. On the contrary, the case is replete with violent presumptions that she was seeking an illicit trade with an enemy port, in evasion of a well-known and efficient blockade of it by the United States naval forces. These presumptions of fact are also of judicial cognizance. (*The Apollon*, 9 Wheat., 374; *Peyroux v. Howard*, 7 Peters, 342.)

The vessel and cargo are, accordingly, condemned to forfeiture.

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THE STEAMER ANNA AND CARGO—THE SCHOONER ANNIE DEAS AND CARGO—THE SCHOONER REVERE AND CARGO.

The question of the allowance of costs and fees to the district attorney for services in prize cases considered.

The prize court is, and always has been, in the United States, a component part of the admiralty court.

In prosecuting in prize cases, the district attorney acts as the law officer of the government, and not in any other capacity.

As the district attorney is compensated by fees and emoluments limited by law to a fixed salary, he cannot have any additional allowance for extra services within the scope of his appointment, unless such extra reward is expressly authorized by law.

The act of August 6, 1861, in regard to the compensation of the district attorney, discussed.

The act of March 25, 1862, § 3, does not abolish the restrictions on the compensation of the district attorney, or give to him for his personal use the amounts taxed to him for services in prize cases.

The acts of July 17, 1862, and March 3, 1863, show that the restrictions on the compensation of the district attorney are still in force.

The court will not apportion to the district attorney, by a direct decree, the amount of the costs taxed for his services in each prize suit which ought to be paid to him towards his aggregate salary.

The court will tax the costs of the district attorney in prize cases, under the existing laws, on the written assent of the counsel for the captors, and the deposition of the district attorney, proving the performance of the service and its reasonable value, and will leave it to the disbursing officers of the treasury to see that no more is retained by that officer than the sum given him by law.

(Before BETTS, J., April 16, 1863.)

BETTS, J.: The three above-named suits having terminated some time since by decrees of condemnation of the several vessels and their cargoes, the district attorney presented his several bills of costs therein to the court for taxation, attesting, by his own deposition, the actual rendition of the respective services charged by him in each case or proceeding, and their just value; and he submitted, with each bill of costs, a written admission of the counsel for the captors, of service upon him, by the district attorney, of a copy thereof, and his assent to the correctness and justness of the items as charged.

Having information that Congress, in closing its late session, adopted some enactments which might have a bearing materially affecting

the allowance of costs to the officers of the court in prize proceedings, and especially those to be taxed to the district attorney of this district, I deferred acting upon the above taxations until authentic copies of such legislation might be furnished to the court. This delay was not under any expectation that Congress had varied the law governing the destination of the forfeited funds to the captors and navy pensioners, but that they might have made more clear their intentions in respect to the method by which the restriction or limitation of the compensation to the officers of court is to be observed and carried into effect, through the action of the court in the matter of taxation.

It does not appear, on the examination of these proceedings in Congress, that any positive change is declared in the former provisions of the law in that respect, or that any other duty devolves upon the court than that of taxing costs according to the meaning of the law as it stood at the time the services were rendered; and it belongs exclusively to the executive department having the subject in charge, to determine the amounts of proceeds from the confiscated property which are legally payable to the district attorney. The last enactments, however, are considered to afford important confirmation of the construction heretofore placed by the court on the law of costs which fixes the allowances to the district attorney, and to afford a guide to the court in the matter of their adjustment. The interpretation of those laws is not before the court for judicial adjudication in this proceeding of taxation. The subject arises incidentally, and the determination of the court acts upon the disbursing departments suggestively only, leaving them free, upon their own responsibility, to award the sum assessed, or to limit that sum to such allowance as, in their judgment, the law authorizes them to allot, pursuant to its express provisions or authoritative construction.

With that function I do not presume to interfere, and have explicitly, in each taxation, reserved the subject for the action of the appropriate officer of the government with whom rests the adjustment of the accounts of the public servants who receive or disburse public money.

In support of the rate of allowance claimed by the district attorney, he submits, in writing, his own views, and those of two eminent counsel, upon the intent and proper construction of the laws applicable to the subject. A cardinal position assumed in the argument I cannot accede to.

I. It is urged that the district attorney does not act in the prize

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court in the character of prosecuting officer in a court of law, but rather in an executive capacity, exercising military functions, and would not, accordingly, be placed here under restrictions applicable to his powers or compensation merely as law officer of the district court.

I think it definitely determined, in the usages of our jurisprudence before the adoption of the Constitution, that the prize court was in existence, as a component part of the jurisdiction of the admiralty court, whether organized under the authority of the several States or colonies, or that of the confederation, (5 Wheaton, appendix, 106,) and became so by direct recognition of the Supreme Court, on the establishment of the federal Constitution, (Constitution, art. 3, sec. 2; 3 Hopkinson's Works, 132; S. C., pamphlet, 61; Talbot v. 3 Brigs, 1 Dall., 95 to 109; 1 Peters's Adm. R., 1; Jennings v. Carson, 4 Cranch, 4, note *a*, and cases at large, there cited; The State of Georgia v. Brailsford, 3 Dall., 54; Glass v. The sloop Betsey, Id., 16,) and subsequently by express designation of Congress, (2 U. S. Stat. at Large, 761, sec. 6,) in these words: "and in the case of all captured vessels, goods and effects, which shall be brought within the jurisdiction of the United States, the district courts of the United States shall have exclusive original cognizance thereof, as in civil causes of admiralty and maritime jurisdiction." This position is necessarily affirmed, by implication, in the recent decisions, on appeal, by the Supreme Court, in numerous prize cases. (The United States v. The Hiawatha and others, 2 Black, 635.)

The district attorney is a statutory officer, created on the first organization of the government, and appointed in each district, in the words of the law, "to prosecute, in such district, all delinquents for crimes and offences cognizable under the authority of the United States, and all civil actions in which the United States shall be concerned, except before the supreme court, in the district in which that court shall be holden." (1 U. S. Stat. at Large, 92, sec. 35.) In this district the present officer was in commission at the commencement of the existing war, and has officially instituted in his own name all the prize suits brought in this court since the war. It is also manifest that Congress regards the functions of the district attorney as a portion of his official powers in prize cases. (10 U. S. Stat. at Large, 168, sec. 3.)

II. These officers are compensated, as a class, by fees and emoluments, limited to a sum not exceeding \$6,000 per annum, and in proportion for a less period, retainable by them, for their own personal compensation, from the entire earnings and receipts coming into their



possession from the incomes of their respective offices and official acts during such period. To receive any other or greater compensation is declared to be a misdemeanor. (10 U. S. Stat. at Large, 166, 168, 169, sec. 3.) The statute above recited was an affirmance and re-enactment of various anterior provisions of law respecting the compensation of public officers by fees and perquisites to limited amounts, and that method of payment is specifically applied to various officers serving in courts of justice, and enforced against them in the restrictions placed upon the quantum of emoluments allowed.

The Supreme Court, in a cause carefully considered, by a unanimous decision, held, that a compensation derived by a public officer from fees and emoluments, *limited to a fixed amount*, was virtually a salary restriction, which cut up by the roots all additional allowances for extra services within the scope of his appointment, unless such extra reward were expressly authorized by law, (*Hoyt v. The United States*, 10 How., 139 to 143;) and the same doctrine was recognized subsequently. (*Converse v. The United States*, 21 How., 464.) The provisions of positive law in that respect, for more than forty years, have been signally emphatic and peremptory. (5 U. S. Stat. at Large, 349, sec. 3; *Id.*, 510, sec. 2.)

III. A strong manifestation of the purpose of Congress, and of the understanding of the district attorney of this district, that the compensation of this officer was and should continue subordinated to the restrictions before stated, exists in the terms of the act passed (at the instance of this officer, as appears in his brief on this hearing) August 5, 1861, which changes the mode of his compensation to one by a salary of \$6,000, in lieu of fees, &c., as theretofore, and superadds, in a distinct section, the provision "that the accounts of said attorney, from and after the fourth day of April last, shall be adjusted and settled in the same manner as the same would have been adjusted and settled had this act been in operation on and after that day," necessarily importing that all moneys realized through perquisites or fees payable to the officer should continue, as theretofore, to be accounted for by the district attorney with the Secretary of the Interior, as public funds, to the use of the government, except such part as had been disbursed by the Secretary of the Interior in satisfaction of the charges fixed upon the officer, and should be wholly withdrawn from his personal perquisites. This statute was passed after numerous prize actions had been commenced and prosecuted in this court to final decrees, through the district attorney's office, and it is to be inferred that the emoluments and costs

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arising to this officer from that source of business were within the contemplation of the act of August 6, 1861, as a portion of proceeds subject to settlement and adjustment before the Interior Department, by him, in his capacity of receiver of public moneys, and to be assigned to other public use, according to law; nor can it be justly presumed that Congress would divert such moneys to any purpose, in defeat of the beneficiary devotion of one moiety of them to the navy pension fund, and the other to the actual captors personally, by permanent law, (act of April 23, 1800, 2 U. S. Stat. at Large, 52, 53, secs. 5 and 9; 12 U. S. Stat. at Large, 607, sec. 11,) unless such intention be expressly declared by law.

IV. Beyond the considerations already suggested, tending to show the purpose and policy under which the law fixed the compensation of the district attorney of this district at a sum not exceeding \$6,000 per annum, the limitation seems to be in accordance with broad, general principles. It is to be noted that no public functionary, holding civil office under the United States within this district, is paid an annual compensation for personal services exceeding that amount, however multifarious, onerous, and important those services may be. The circuit judge of the United States, presiding in this and two adjacent States, over four separate circuit courts, and at the same time discharging the duties of judge of the Supreme Court also; the sub-treasurer of the United States; the collector, postmaster, marshal, naval officer, &c., have their compensation limited to that amount, without regard to the multiplicity or diversity of the items of service exacted of them in each instance, (more than quadrupled by the exigencies of war,) and receive no augmentation of reward therefor, except it be granted directly for specific cause, the rule being that no increase of pay is allowed for the performance of any act within the scope of the employment of the appointee when serving for a fixed compensation. (*Hoyt v. The United States*, 10 How., 141.) No cause is manifest which should change the principle with regard to the allowance of surplus payments to the district attorney, to be retained and appropriated to him as personal compensation. No like legislation exists for further rewards to such classes of officers, including even the heads of departments, than their salaries, because of any addition of labors or responsibilities, however manifold, imposed upon them under the necessities of the war. The general law recognizes no other method of relief to incumbents in office for overcharge of duties, than by supplying the aid of increased agents, deputies, assistants or clerks, for carrying on the public business.

V. The argument is pressed with great earnestness, that the act of March 25, 1862, sec. 3, imports that Congress intended to abrogate all restrictions of compensation to district attorneys derived from their services in prize cases, and that those earnings are granted to the attorneys without abatement or regard to the sum total to be received, and should be taxed to them in that sense, with a view to such emoluments being paid to them personally, irrespective of the fee-bill of February 26, 1853, and prior laws, or the special act of August 6, 1861, affecting the district attorney of this district.

It is to be noticed, however, that no language is employed in the act of March 25, 1862, expressly granting to district attorneys a compensation to be adjusted and determined by the court for services in prize proceedings, additional to the salaries or limited pay already fixed by law; nor does the provision of section 3, in terms, rescind or qualify the restrictions of the amounts payable to those officers personally. The implication from the frame of the act, if it does not amount to an indirect repeal of the first clause of the act of August 6, 1861, is not destitute of force and plausibility, that the leading intent of Congress was to introduce into this novel course of practice a further scale of emoluments, in part to help raise the earnings of the attorneys in the different districts towards the *maximum* allotted by law to the office; and further, in part, in respect to districts producing surplusses beyond the stated compensation of the office, to assign portions of the proceeds for services in prize suits, by distribution, to the judiciary fund, in relief of expenses borne by the government in carrying on prosecutions in its name for the pecuniary benefit of navy pensioners and captors. The presumption is enhanced by the consideration that the income to the marshal remains under the old limitation, and all received by him exceeding \$6,000 per annum is paid into the judiciary fund, notwithstanding his personal services and pecuniary responsibilities are greatly augmented by the war; and the surplus over his *maximum* pay, derived from proceedings in prize sales, must draw very large sums from the naval pension fund and the portion distributed to the individual captors—objects eminently favored by Congress in the destination of prize funds.

Whether such object had influence or not in the form of the enactment, Congress evinced emphatically, at the same session, by a declaratory act, that they did not use the language then employed with the design that it should convey unlimitedly the emoluments received from prize suits to the personal benefit of those officers :

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1. An act was passed July 17, 1862, (12 U. S. Stat. at Large, 608, sec. 12,) with a *proviso* declaring "that the annual salaries of district attorneys, prize commissioners, and marshals shall, in no case, be so increased, under the several acts for compensation in prize, as to exceed, in the aggregate, the following sums, and any balance beyond the several sums shall be paid into the treasury, viz., district attorneys, \$6,000; prize commissioners, \$3,000; marshals, \$6,000." This language would seem to make the limitation of the entire amount of compensation of each officer, for every service assigned to their respective offices, as precise and stringent as could be enacted; and the last expression of the legislative will is the one which must prevail in the execution of the law.

2. It is, moreover, manifest, by the provisions of the act approved March 3, 1863, (secs. 11 and 12,) providing, among other things, for the payment of costs to district attorneys, that, when Congress intends that the limitation in respect to costs, appointed in the fee-bill of February 26, 1853, shall not apply to costs subsequently granted to such officer, that purpose will be expressly signified by the law giving the costs; and that, otherwise, the restriction will embrace the new grant.

VI. The adjustment by the court of a just and suitable compensation to be received by the prize commissioners, the district attorney acting for the United States, and the counsel for the captors, "*for their several and respective services in each prize case or proceeding*," (act of March 25, 1862, sec. 3,) plainly does not presuppose that such varied services are to be performed in presence of the court, or with its personal cognizance. Many of the services will, in their nature, have been essentially *constructive*. The compensation will necessarily rest on the basis of a *quantum meruit*. This, in the judicatories of the State, is a matter inquirable into by testimony, and determinable in open court. (*Stevens v. Adams*, 23 Wend., 57; S. C. in Error, 26 Wend., 451; *Wilson v. Burr*, 25 Wend., 386; *Stow v. Hamlin*, 11 How. Prac. R., 452; *Sedgwick on Damages*, 102, 103.) The court, in regard to claims important in amount, or resting on extrinsic circumstances, would, in cases of dubious facts, be obliged to resort to references or other methods of investigation, admitting of proofs to be given in support of or in opposition to claims for *quantum meruit* compensation, the leading and affirmative evidence being required from the claimants. That mode of investigation would be but imperfectly employed by a judge sitting out of court, and acting only as a taxing officer.

VII. The manner in which compensation in prize suits is made payable in this district to the attorney, by section 3 of the act of March 25, 1862, evidently precludes the court from assigning the amount to the officer by a direct decree; because, first, it is to be preliminarily determined by the proper executive department whether the compensation of the district attorney is solely a salary, and then whether the entire amount is to be defrayed out of the prize fund created during the year in which the service was rendered, in the proportion the amount derived from each suit or proceeding bears to the salary of the officer for the particular year. Such apportionment must not only be perplexing and uncertain to be carried out by the judge, for want of facts necessary to make the computation, but must also be exceedingly complex and embarrassing and frequently impracticable of determination by a judge on taxation, because suits and proceedings in prize, in many cases, now after the lapse of more than two years, are found still pending in the courts undetermined; and no means are supplied for discriminating the part of the fund obtained from each proceeding in suit, which might be applied to the costs of the officer in making up his share.

VIII. The court accordingly decided, at an early day, that it lay with the disbursing officers of the government to adjudge the amount of compensation granted to the district attorney and the prize commissioners by existing laws, and the method of its distribution and payment to them; and that the province of the court was limited to the mode and amount of taxation or adjustment of those particulars, apart from the assignment or payment of such costs.

The third section of the act of March 25, 1862, was deemed peremptory in its direction that the costs should be allowed by the court to the district attorney in prize proceedings, without regard to antecedent limitations of his compensation, but the power might be vested in the departments to enforce, on its disbursement, the restrictions on his personal compensation directed in prior provisions of law. That authority may be implied in the provisions enacted July 17, 1862, and March 3, 1863, or in an implied repeal of the third section of the act of March 25, 1862, in its application to the attorney of this district, or in the continuing, in this respect, of the law of taxation, subject to the governance of the act of February 26, 1853. (Act of August 6, 1861, 12 U. S. Stat. at Large, 317, sec. 1.)

That rule will be still adhered to, and the court will not assume the responsibility of attempting to interfere with the discretion of the Sec-

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retaries of the Treasury, Interior, or Navy, in adjudging what proportion of the proceeds of prize property is by law payable to the district attorney. The taxation or adjustment of the costs of the attorney is made by the judge upon the written assent of the counsel for the captors, and the deposition of the district attorney proving the performance of the service and its reasonable value, no objection being interposed thereto from any party; and it lies with the disbursing officers of the treasury to see that no more is retained by the officer than the sum given him by law.

Should any question touching the exposition of the laws of costs on this subject be brought before the court for judicial examination and decision, the court would not feel itself committed on that question by this course of taxation.

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THE STEAMER PETERHOFF AND CARGO.

Under the special circumstances of this case, the master of the vessel, who had been examined as a witness *in preparatorio*, was allowed on the application of the claimants, to be re-examined on one of the standing interrogatories, on condition that he should at the same time be examined on certain special interrogatories framed by the court.

By the regular course of procedure in a prize suit, a witness cannot claim a right to modify or enlarge his testimony after it has been formally completed and submitted to the court.

(Before BETTS, J., May 7, 1863.)

BETTS, J: Messrs. Martin & Smith, of counsel for the claimants in this suit, read and filed, on the 2d instant, an affidavit in this cause, with a notice to the district attorney and the counsel for the captors, advising them of an application to be made to the court, in the cause, that Stephen Jarman, who had been previously examined *in preparatorio* as a witness in the cause, "be allowed to add to his answer to the 20th standing interrogatory in the suit," (theretofore made by him,) "the statement contained in the foregoing affidavit, or for such other or further order as the court may deem proper in the premises." On hearing counsel on the part of the claimants and of the witness, Jarman, in support of the said application, and for the libellants in objection thereto, and on reading also the affidavit of the prize commissioner in relation to the conference between himself and the witness, after the examination aforesaid had been taken in the cause, and on adverting to the preparatory proofs transmitted to the court by the prize commissioner, and due consideration being had of the premises, and it appearing to the court therefrom that the examination of the witness Jarman was completed and reduced to writing by the com-

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VII. The manner in which compensation in this district to the attorney, by service on March 25, 1862, evidently precludes the compensation to the officer by a direct decree; but the amount is to be determined by the proper exercise of the discretion of the district attorney, whether the entire amount is to be deferred until the year in which the service is terminated, or the amount derived from each suit is to be paid to the officer for the particular year. It is a perplexing and uncertain question of facts necessary to make the determination, and is a very complex and embarrassing matter for a judge or prize commissioner, in many cases, where the prize is found still pending and no compensation is supplied for discrimination in proceeding in suit, and in making up his account.

VIII. The court, in its reply to said interrogatory, it is considered that the witness should rightfully be allowed a compensation of compensation to the commissioner upon the aforesaid interrogatory, to embody in his answer thereto the explanatory representation set forth in his affidavit made and filed in support of this application, upon the condition that, at the same time as he makes such statement, he be examined by the commissioner on the following special interrogatories, directed by the court, in accordance with the standing prize rules, viz:

Special interrogatories to be administered to Stephen Jarman, in addition to the 20th standing interrogatory before administered to him, and his replies thereto, to be received on the trial of the cause, in connection with and as explanatory of his answers to the aforesaid standing interrogatory:

Special interrogatory number one. Did you know, or had you been informed, or had you reason to believe, after your answers to the stated interrogatory aforesaid had been given by you and written down by the prize commissioner, and when did you first acquire such knowledge, information, or belief, that any other witness, and who, being one of the ship's company on the voyage in question, had, after your examination, and when, declared before such commissioner that any

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board the vessel and on the voyage inquired  
 n, thrown overboard, destroyed or cancelled,  
 or cancelled, and by whom, and when?  
 two. Did you at any time, and when  
 ment or explanation to the prize  
 ation and testimony in this suit  
 the destruction or concealment  
 d the vessel, and on the

you apply to the prize  
 answer to the 20th interroga-  
 been attested to by you, or was  
 commissioner; and did he inquire of  
 whether you understood that interrogatory  
 o, at the time your testimony was given, or  
 jury of you to that purport or effect, and when,

he it is ordered and decreed that the witness named be per-  
 to put in his proposed re-examination and statement before the  
 ze commissioner upon the twentieth standing interrogatory, within  
 five days after the entry of this order, on submitting to an examina-  
 tion upon the above special interrogatories; that the prize commis-  
 sioner give the district attorney immediate notice of the time and place  
 of such re-examination; and that, after the close thereof, he forthwith  
 transmit the amended return of the testimony to this court, in order  
 that the cause may be despatched to a speedy hearing.

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**THE STEAMER TUBAL CAIN AND CARGO—THE SCHOONER ANNIE  
 DEAS AND CARGO.**

The marshal is not authorized to appoint an auctioneer to conduct a judicial sale, at the expense  
 of the government or of a private party, without the consent of the party for whose benefit  
 the service is performed.

Any custom or usage to that effect rests only on the direct consent of the party using the process  
 of sale.

An auctioneer cannot have costs or disbursements taxed in his favor by the court, *in invitum*,  
 against the libellants or claimants personally, or against the *res*, nor can the auctioneer's  
 charges be taxed to the marshal as a part of his disbursements.

(Before BETTS, J., May 22, 1863.)

BETTS, J.: The clerk, on taxation of the marshal's disbursements  
 in the above causes, disallowed, in the first, the sum of \$654 80, and  
 in the second the sum of \$411 48, fees to be paid an auctioneer for



VII. The manner in which compensation in prize suits is made payable in this district to the attorney, by section 3 of the act of March 25, 1862, evidently precludes the court from assigning the amount to the officer by a direct decree; because, first, it is to be preliminarily determined by the proper executive department whether the compensation of the district attorney is solely a salary, and then whether the entire amount is to be defrayed out of the prize fund created during the year in which the service was rendered, in the proportion the amount derived from each suit or proceeding bears to the salary of the officer for the particular year. Such apportionment must not only be perplexing and uncertain to be carried out by the judge, for want of facts necessary to make the computation, but must also be exceedingly complex and embarrassing and frequently impracticable of determination by a judge on taxation, because suits and proceedings in prize, in many cases, now after the lapse of more than two years, are found still pending in the courts undetermined; and no means are supplied for discriminating the part of the fund obtained from each proceeding in suit, which might be applied to the costs of the officer in making up his share.

VIII. The court accordingly decided, at an early day, that it lay with the disbursing officers of the government to adjudge the amount of compensation granted to the district attorney and the prize commissioners by existing laws, and the method of its distribution and payment to them; and that the province of the court was limited to the mode and amount of taxation or adjustment of those particulars, apart from the assignment or payment of such costs.

The third section of the act of March 25, 1862, was deemed peremptory in its direction that the costs should be allowed by the court to the district attorney in prize proceedings, without regard to antecedent limitations of his compensation, but the power might be vested in the departments to enforce, on its disbursement, the restrictions on his personal compensation directed in prior provisions of law. That authority may be implied in the provisions enacted July 17, 1862, and March 3, 1863, or in an implied repeal of the third section of the act of March 25, 1862, in its application to the attorney of this district, or in the continuing, in this respect, of the law of taxation, subject to the governance of the act of February 26, 1853. (Act of August 6, 1861, 12 U. S. Stat. at Large, 317, sec. 1.)

That rule will be still adhered to, and the court will not assume the responsibility of attempting to interfere with the discretion of the Sec-

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The Peterhoff.

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retaries of the Treasury, Interior, or Navy, in adjudging what proportion of the proceeds of prize property is by law payable to the district attorney. The taxation or adjustment of the costs of the attorney is made by the judge upon the written assent of the counsel for the captors, and the deposition of the district attorney proving the performance of the service and its reasonable value, no objection being interposed thereto from any party; and it lies with the disbursing officers of the treasury to see that no more is retained by the officer than the sum given him by law.

Should any question touching the exposition of the laws of costs on this subject be brought before the court for judicial examination and decision, the court would not feel itself committed on that question by this course of taxation.

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THE STEAMER PETERHOFF AND CARGO.

Under the special circumstances of this case, the master of the vessel, who had been examined as a witness *in preparatorio*, was allowed on the application of the claimants, to be re-examined on one of the standing interrogatories, on condition that he should at the same time be examined on certain special interrogatories framed by the court.

By the regular course of procedure in a prize suit, a witness cannot claim a right to modify or enlarge his testimony after it has been formally completed and submitted to the court.

(Before BETTS, J., May 7, 1863.)

BETTS, J: Messrs. Martin & Smith, of counsel for the claimants in this suit, read and filed, on the 2d instant, an affidavit in this cause, with a notice to the district attorney and the counsel for the captors, advising them of an application to be made to the court, in the cause, that Stephen Jarman, who had been previously examined *in preparatorio* as a witness in the cause, "be allowed to add to his answer to the 20th standing interrogatory in the suit," (theretofore made by him,) "the statement contained in the foregoing affidavit, or for such other or further order as the court may deem proper in the premises." On hearing counsel on the part of the claimants and of the witness, Jarman, in support of the said application, and for the libellants in objection thereto, and on reading also the affidavit of the prize commissioner in relation to the conference between himself and the witness, after the examination aforesaid had been taken in the cause, and on adverting to the preparatory proofs transmitted to the court by the prize commissioner, and due consideration being had of the premises, and it appearing to the court therefrom that the examination of the witness Jarman was completed and reduced to writing by the com-

missioner and attested to by the oath of the witness, on the 1st day of April, 1863, that the report of the testimony of all the witnesses was transmitted to the court and filed therein on the 21st of the same month, and an order granted in the cause by the court, on motion of the district attorney, that the proofs so transmitted by the commissioner be opened, it is considered by the court that the witness is precluded, by the regular course of procedure in a prize suit, from claiming a right to modify or enlarge the testimony before given by him after the same has been formally completed and submitted to the court; but it not being made to appear affirmatively, in opposition to the aforesaid motion, that the witness before named was actually aware that his testimony in the case, as given before the commissioner, had been formally closed, and the evidence of the time and circumstances of his interview with the commissioner leaving room for a fair implication, upon his affidavit and that of the commissioner, that he was invited to review his answer theretofore given to the 20th standing interrogatory, and to offer further statements in relation thereto, and also that he might have supposed that his oral representations on that interview would be regarded by the commissioner as a continuous and constituent part of his sworn reply to said interrogatory, it is considered by the court that the witness should rightfully be allowed a re-examination by the commissioner upon the aforesaid interrogatory, and be permitted to embody in his answer thereto the explanatory statement and representation set forth in his affidavit made and filed in support of this application, upon the condition that, at the same time, in making such statement, he be examined by the commissioner upon the following special interrogatories, directed by the court, in pursuance of the standing prize rules, viz :

Special interrogatories to be administered to Stephen Jarman, in addition to the 20th standing interrogatory before administered to him, and his replies thereto, to be received on the trial of the cause, in connection with and as explanatory of his answers to the aforesaid standing interrogatory :

Special interrogatory number one. Did you know, or had you been informed, or had you reason to believe, after your answers to the stated interrogatory aforesaid had been given by you and written down by the prize commissioner, and when did you first acquire such knowledge, information, or belief, that any other witness, and who, being one of the ship's company on the voyage in question, had, after your examination, and when, declared before such commissioner that any

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The Tubal Cain—The Annie Deas.

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papers, and what, on board the vessel and on the voyage inquired about, had been burnt, torn, thrown overboard, destroyed or cancelled, or attempted to be destroyed or cancelled, and by whom, and when?

Special interrogatory number two. Did you at any time, and when and where, make or offer any statement or explanation to the prize commissioner previous to your examination and testimony in this suit on the 1st of April, 1863, in relation to the destruction or concealment of any paper or papers, and what, on board the vessel, and on the voyage in question?

Special interrogatory number three. Did you apply to the prize commissioner for leave to inspect your answer to the 20th interrogatory of your own accord, after it had been attested to by you, or was your attention called to it by the commissioner; and did he inquire of you, and when and where, whether you understood that interrogatory and your answer thereto, at the time your testimony was given, or make any other inquiry of you to that purport or effect, and when, and where?

Wherefore it is ordered and decreed that the witness named be permitted to put in his proposed re-examination and statement before the prize commissioner upon the twentieth standing interrogatory, within five days after the entry of this order, on submitting to an examination upon the above special interrogatories; that the prize commissioner give the district attorney immediate notice of the time and place of such re-examination; and that, after the close thereof, he forthwith transmit the amended return of the testimony to this court, in order that the cause may be despatched to a speedy hearing.

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THE STEAMER TUBAL CAIN AND CARGO—THE SCHOONER ANNIE DEAS AND CARGO.

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The marshal is not authorized to appoint an auctioneer to conduct a judicial sale, at the expense of the government or of a private party, without the consent of the party for whose benefit the service is performed.

Any custom or usage to that effect rests only on the direct consent of the party using the process of sale.

An auctioneer cannot have costs or disbursements taxed in his favor by the court, *in invitum*, against the libellants or claimants personally, or against the *res*, nor can the auctioneer's charges be taxed to the marshal as a part of his disbursements.

(Before BETTS, J., May 22, 1863.)

BETTS, J.: The clerk, on taxation of the marshal's disbursements in the above causes, disallowed, in the first, the sum of \$654 80, and in the second the sum of \$411 48, fees to be paid an auctioneer for

his commissions in disposing of the prize property at public sale. The marshal, in behalf of the auctioneer, appeals to the court to have those disallowances reversed, and to order the above sums to be taxed and certified in favor of the marshal's accounts. It will be assumed that the marshal laid before the clerk adequate proof that he had employed the auctioneer to render those services in the suits; that the services were necessary and proper, and have been performed therein; that he actually made the disbursements to the auctioneer, as charged therefor; and that the same were charged at a reasonable and proper rate. These vouchers and the evidence to verify them have not been brought before me on this appeal; but, as the admission of the amounts by the Secretary of the Interior could not be obtained without evidence to that effect, it will be presumed that such evidence accompanied the vouchers on the presentation of the charges to the clerk, and were properly considered by that officer. The purpose of this appeal is to obtain from the court an adjudication that the commissions claimed by the auctioneer are legal liens upon the proceeds of the public sales, which the marshal is bound to disburse and have satisfied on the adjustment of his charges by the court.

The point has been earnestly discussed, on this appeal, by counsel for the auctioneer, and the justness of the allowance is maintained upon its intrinsic merits and upon the long, unvaried usage in this respect of the courts of the United States within this district. The district attorney and the counsel for the captors state that they have positive instructions from the Treasury and Navy Departments to oppose this class of charges for services rendered since a time anterior to the period of those services; and the marshal raises the same objection unless the sanction of those departments is produced for the disbursements.

No provision of law authorizes the marshal to appoint auctioneers to conduct judicial sales at the expense of the government or of private parties, without the consent of the parties for whose benefit the services are performed. The official duty is imposed on the marshal, and his compensation therefor is appointed by law; and the custom or usage supposed to exist in the courts, sanctioning the designation and compensation of an additional agent to that end, is found, on examination, to rest only on the direct consent of the party using the process of sale. Two fatal objections to this appeal, therefore, exist: first, the auctioneer is not an officer in the suit, recognized by law as entitled to claim and have taxed costs or disbursements in his favor

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The Springbok.

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by the court, *in invitum*, against the libellants or claimants personally, or against the *res* produced by the action; second, the court cannot enforce, or recognize as of any legal effect against the suitors, arrangements which may exist between the marshal individually, or in his official capacity, touching proceedings in suits, with other persons not being also under the authority of the court, in establishing fees, commissions, or other rewards, by way of taxation, adjustment, or otherwise, except in due course of law on suit brought.

For the foregoing reasons, the above application on the part of the auctioneer must be denied.

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THE BARK SPRINGBOK AND CARGO.

An order was made by the court in this case that the marshal open the packages of cargo found on board of this vessel, covered by two of the bills of lading found on board, and take an inventory of their contents, their contents not being specified in any papers found on the vessel. A claimant in a prize suit can, under the rules of the court, cause the suit to be disposed of, if the libellants are guilty of any wrongful delay in its prosecution.

The right of a belligerent to visit and search a neutral vessel in time of war implies a power in the prize court of the belligerent to which a captured neutral vessel is sent for adjudication, to order, under reasonable precautions and forbearance, an examination of the cargo sufficient to ascertain its character, and then to employ evidence so acquired, as further proof to establish the culpability of the voyage.

The belligerent right of search may be made effective by an examination of the lading, as well as the papers, of a vessel.

(Before BETTS, J., May, 1863.)

BETTS, J.: A succession of motions and counter-motions have been made by the respective parties to this suit, antagonistic to each other, and collateral to the main merits in issue on the pleadings, in some instances seeking to enforce the proceedings before the court with greater speed, and in others to obtain delay in the final hearing of the cause. Those subsidiary proceedings have resulted in placing the case before the court in this posture :

1. The libellants urge a postponement of the trial of the cause now standing upon the trial docket, on cross notices by the libellants and the claimants, until Mr. Upton, one of the counsel for the libellants, shall be relieved from detention as a witness, upon subpoena, before the Solicitor of the Treasury, on a public investigation now on foot before that officer, and be enabled to attend the trial of this suit, and, furthermore, until such search and examination of the cargo seized on board of the bark, as may be ordered on the motion therefor pending before the court, shall be fully made.

2. The claimants demand that the libellants proceed peremptorily to the trial of the cause, or that the same be dismissed from the docket.

In point of form it is not earnestly contended by the claimants that a reasonable and legal excuse is not supplied for delaying the hearing of the cause because of the detention of Mr. Upton from the sitting of this court, under a subpoena exacting his attendance before another tribunal, nor that such detention has been unreasonable in duration thus far; and it is, accordingly, considered, that no laches are imputable to the libellants for that cause, and that they are entitled to a further continuance of the case until otherwise ordered by the court.

But the claimants strenuously oppose the delay of the cause to enable the libellants to search and inspect the contents of the packages containing the cargo seized: first, because the law of nations denies to the captors the right to break the bulk of the cargo, or to use the contents of the lading as evidence, in the first instance, to establish the illegality of the voyage on which the vessel was arrested. This position is not maintained to that extent by all of the counsel for the claimants, but they concur in insisting and protesting that an order cannot now be made by the court, allowing the bulk of the cargo to be broken, by reason of the gross delay of the libellants, in making application to the court for such authorization, and also because of the loose and inadequate frame of the papers upon which such application is now founded.

The application by the libellants to have the cargo inspected does not, as it seems to be understood by the counsel for the claimants, embrace the whole lading of the vessel, but is limited to the packages mentioned in two bills of lading only, (Nos. 3 and 4,) because no invoices or bills of particulars among the ship's papers designate the contents of those packages. Nor does this motion pray for any stay in the regular course of the cause. If there had been any delinquency in the prosecution of the suit by the libellants, the claimants had a ready and adequate relief provided in the standing rules of the court, whereby they could, by their own affirmative action, have displaced the suit from the record, and compelled a restoration of vessel and cargo, (Prize Rule, No. 23; Admiralty Rule, (Supreme Court,) No. 39; Admiralty Rule, (District Court,) No. 123;) and they were under no compulsion to await the tardiness of the libellants, if any wrongful delays were practiced against them.

The general principle upon which a motion to the court to order a prize cargo opened, when under seizure, and charged with being composed of articles contraband of war, is grounded and sustained, was recognized during the present term in the case of *The Peterhoff*. The

counsel for the claimants in that case protested against the rightfulness of the seizure of the vessel and cargo, and the regularity of a resort to the lading of the vessel for proof *in preparatorio*, but did not directly controvert the doctrine, that the right of a belligerent to visit and search a neutral vessel in time of war implies a power in the prize court of the belligerent to which the neutral vessel is sent for adjudication, to order, under reasonable precautions and forbearance, an examination of the cargo, sufficient to ascertain its character, and then to employ evidence so acquired, in the way of further proof, to establish the culpability of the voyage. It is believed that the general principle is irrefragable, and equivalent to an axiom in the law of nations. Grave questions may, doubtless, present themselves as to the methods or processes by which the rule is to be administered; but errors or excesses of that character do not abrogate its validity, and generally only afford opportunity to the courts to repress an improper persistence in the wrong, or to redress it with adequate penalties or indemnification, when committed. The present motion does not present the occasion for discussing the general subject touching the import and extent of the right of visitation and search in the sense in which it is applicable to this class of cases. As a governing dogma of national right and law, it may fairly be understood to look to practical and useful results, and not to mean that a neutral vessel can be laden with contraband of war, and attempt to convey it *ad libitum* on the ocean, without being liable to account for navigating with such a cargo in the vicinity or direction of enemy ports, or ports convenient to the use of the enemy, unless, before she is seized, evidence *aliunde* as regards her equipment and lading be discovered, proving that her voyage was intended for the benefit of the enemy. A complete cover to the most injurious frauds might thus be secured, if the offending vessel was adroit enough to carry no paper or person capable of supplying evidence of the culpability of her enterprise.

The law authorizing a visitation and search is ample enough in its provisions, and is believed to be sufficiently distinct and efficient in its intent and policy, to enable prize courts proceeding under it to render its action a wholesome and conservative agency in preserving and promoting the common interests and purposes of the family of nations by whom it has been adopted. Its fundamental and controlling doctrines are laid down, with singular precision and unanimity in the text writings and judicial adjudications of the principal jurists



of Europe and America; and it will be sufficient for the purpose of the present inquiry to advert to some of those authorities, eminently reliable for their weight and general influence.

Naturally, the first object of the visitation and search of a neutral vessel by a belligerent cruiser is to examine the ship's documents and papers, and to ascertain her nationality, her port of departure, her destination, her lading, and the evidences of its character and ownership, so far as those particulars are determined by the papers on board. The next step is, if circumstances of a suspicious bearing are discovered, indicating her employment to be in violation of good faith and honest neutrality, to seize the vessel and cargo and submit them to adjudication before a prize court of the belligerent power which makes the arrest. This right is conceded and exercised by all maritime nations, in time of war, in respect to the transportation by sea of contraband of war. Sufficient evidence of the generality and extent of this power is found strongly stated in the standard and most familiar authorities, domestic and foreign. (3 Phillimore's Int. Law, part 10, ch. 3, §325; 1 Kent's Comm., 154; Wheat. Elements of Int. Law, part 2, ch. 2, §15; *The Maria*, 1 Ch. Rob., 340; *The Anna Maria*, 2 Wheat., 332; *La Jeune Eugenie*, 2 Mason, 438; Wheat. on Captures, 94, art. 19; Halleck on Int. Law, ch. 25.) It will also be found that the right of search may be made effective by an examination of the lading as well as the papers of the vessel, restrained always within the limits of a fair and reasonable reserve. (*The Maria*, 1 Ch. Rob., 340; *The Anna Maria*, 2 Wheat., 332.)

I am of opinion that the libellants are entitled to an order of the court allowing them to have, under the superintendence of proper officers of the court, a view of the lading of the vessel, limited to the aforesaid packages contained in the bills of lading Nos. 3 and 4. It is therefore ordered, that the marshal cause the packages found in the bills of lading Nos. 3 and 4, laden on board of the said vessel, and in his possession under her arrest, to be opened at a convenient time and place, in presence of the counsel for the respective parties and of the marshal, and that an inventory of the contents thereof be made in the presence of said parties, and that a report thereon be forthwith made by the marshal to the court, to abide the further order of the court in the cause.

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The Belle.

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## THE SCHOONER BELLE AND CARGO.

Vessel and cargo condemned for an attempt to violate the blockade.

(Before BETTS, J., May, 1863.)

BETTS, J.: This vessel and cargo were captured at sea, off the coast of Georgia, by the United States gunboat Potomska, February 23, 1863. The vessel was deemed unseaworthy, and, after a naval survey and appraisal, was delivered over to the use of the government, at Port Royal, South Carolina, at the value of \$800. No party intervened to defend or claim the prize, and, on the return of the warrant of arrest in court, her default was duly taken and declared upon the minutes of the court, April 7, 1863, and the proofs *in preparatorio* were thereupon submitted to the court by the United States attorney, with a motion for the condemnation and forfeiture of the cargo sent to this port for adjudication.

There were found on board of the vessel at her capture a certificate of British registry, dated at Nassau, N. P., May 5, 1862, to Horatio Johnson, of that place, mariner, stating that the vessel was foreign built, at Charleston, South Carolina, in the year 1861; also, a shipping agreement between Richard Eccles, master of the vessel, and three men, a mate, a seaman, and a cook, for a voyage in the vessel from Nassau aforesaid to Port Royal and back to the port of Nassau, signed February 9, 1863; a clearance from the receiver general's office at the port of Nassau, to Port Royal, dated February 11, 1863, with a cargo of coffee, salt, copperas, and gin; an agreement in writing, dated at Nassau, February 6, 1863, and signed by the master, (Eccles,) stating the terms on which he was to navigate the schooner "on the aforesaid voyage, for the purpose of running the said blockade," and the payments to be made to him in specie and in confederate currency on his arrival at a port in the Confederate States, and the additional amount to be received by him on his safe arrival at Nassau, on his return trip.

The master, on his examination upon the stated interrogatories, admits that he knew of the war and of the blockade, and that the owner of the vessel and the cargo did also, and that it was agreed in writing between them, that the vessel and cargo should run the blockade into any of the Confederate States he could get into. A part owner of the vessel and cargo, who was on the vessel when she was captured, also testifies that he knew that Sapello, on the coast of

Georgia, the port which the vessel was attempting to enter when captured, was in a state of blockade.

These proofs leave no room for doubt in the case, that the voyage was deliberately put on foot, and attempted to be executed, for the purpose of entering a port of the rebels then under strict blockade. A decree of condemnation and forfeiture of the cargo and of the proceeds of the vessel must accordingly be entered.

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#### THE STEAMER NICOLAI FIRST AND CARGO.

Vessel and cargo condemned for an attempt to violate the blockade, the cargo being also mostly contraband of war, and on transportation to a port of the enemy.

(Before BETTS, J., May, 1863.)

BETTS, J.: The above vessel and cargo were sent into this port, as prize of war, by the gunboat Victoria, for adjudication. A libel was filed against them, in the name of the United States, March 30, 1863. Process of attachment thereon was returned into court, April 21 thereafter, by the marshal, as duly served, and, no one appearing therein, or making claim or answer to the monition, proclamation was made, on motion of the United States attorney, conformably to the course of procedure of the court, and the default of all persons having an interest in the prize was thereupon ordered by the court.

The only papers found with the vessel, on her capture, were a certificate of British registry of the steamer, dated at Dublin, April 23, 1860, to James Sterling, merchant, of the same place, on which is indorsed, at the custom-house of Nassau, N. P., by the register, a statement that, on the 12th of March, 1863, John Dennis had been appointed master of the ship; also, a copy of a manifest of her cargo, but without date or signature, or note of the port of its departure or destination, or specific designation of most of the packages. On the arrival of the vessel in this port, it being proved, by the deposition of her master, that her lading consisted mostly of powder and ammunition, the court ordered the prize commissioners to have the same discharged from the vessel, and safely stored on shore.

The master, the first mate and the boatswain were examined *in pre-paratorio*, upon the standing interrogatories. The testimony shows, that the vessel was laden at Liverpool, and despatched thence, in November last, with a cargo consisting chiefly of powder and ammunition, destined to Nassau, N. P., and the Confederate States, and back to Nassau. Her lading was mostly contraband of war. She was bound

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The Granite City.

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to Charleston or any confederate port where she could get in. The master says that the clearance which the vessel took from England was destroyed by him at Nassau. No bills of lading were signed by the master, and none were found on board of the prize. The vessel was captured March 21, 1863, off Little River, North Carolina, about a mile from the shore, trying to run the blockade. The master destroyed the clearance of the vessel. He had full knowledge of the blockade, and he was steering, when captured, toward Wilmington, North Carolina. The steamer had previously made two or three attempts to enter the port of Charleston, but was prevented from doing so by the blockading squadron.

The testimony of the witnesses is surprisingly ingenuous and distinct, and no room for doubt remains that the voyage commenced, and was prosecuted up to the capture of the vessel, with a fixed design and effort to violate the blockade of the coast, and also to transport large quantities of ammunition and military supplies to the use of the confederate forces. It is, accordingly, ordered that a decree be entered for the condemnation and forfeiture of the vessel and cargo.

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THE STEAMER GRANITE CITY AND CARGO.

Vessel and cargo condemned for an attempt to violate the blockade.

Spoliation of papers.

Violation of the blockade by the vessel on previous voyages.

(Before BETTS, J., May, 1863.)

BETTS, J.: This ship and cargo were captured at sea, March 22, 1863, in latitude 25° 30' north, and longitude 75° 53' west, by the United States gunboat Tioga, and were sent to this port for adjudication. They were here libelled for forfeiture, April 21, 1863. Process of attachment and a monition were returned by the marshal as served, and, proclamation having been duly made in court, the default of all persons in interest was thereupon ordered, and the proofs *in preparatio* were opened and the case was submitted to the court for decision.

The papers produced from the ship by the prize-master were a certificate of British registry of her, dated at the port of London, December 24, 1862, to Edward Pembroke, of that place, as owner, which states that she was British-built; a cocket ticket, a victualling bill, and two shipping bills, dated Glasgow, December 29, 1862, for Nassau, N. P.; a health bill, given at Funchal, for Nassau, January, 1863; a clearance of the vessel at Nassau, N. P., March 20, 1863, for St Johns, N. B., with a

cargo consisting of inward cargo, not landed—10 packages of goods; a clearance and bill of health for the vessel, laden with a cargo of cotton, dated at Wilmington, N.C., in the Confederate States, March 10, 1863, for a voyage to Nassau, N. P.; a manifest of the same cargo, sworn to by the master of the ship, on the same day, at Wilmington aforesaid; and a shipping agreement, executed at Nassau, February 19, 1863, between John McEwan, master of the said steamship, and ten of her crew, for a voyage from Nassau to St. Johns, N. B., also back to the port of Nassau, or any port in the West Indies.

McEwan, the master, Gibson, the cook, and Campbell, the chief steward, were examined *in preparatorio* in the suit, by the prize commissioners of this port, on the 30th and 31st days of March, 1863. The master testifies that the Granite City was an English merchantman, owned in England, and was captured by the United States gunboat Tioga, March 22, 1863, about fifty miles to the eastward of Eleuthera island, because she was thought to be intending to run the blockade; that she was built in the Clyde, in December last, and called *The City of Dunedin*, until she began this voyage, when the name was changed to *The Granite City*; that the voyage began at Glasgow, in December, 1862, and was to be a round one, ending in any port of the United Kingdom; that she touched at the Isle of Man, Cork, Madeira, and St. Thomas, and thence went to Nassau, N. P., where she first broke bulk; and that, at that port she discharged part of her cargo, and then cleared for St. Johns, N. B. The record states that the witness, although admonished by the commissioners, declines to disclose to what ports or places the vessel was then bound. He says that Nassau was the last clearing port before her capture, and that the cargo was consigned to order; but, as the record shows, he again declines to answer to what port the cargo carried from Nassau was to be delivered. He says that various papers of the ship, on board when she left Nassau, were burned by his orders, during the chase of the vessel, and before her capture; and that he knew of the war, and that the southern ports were under blockade by the United States government, before she left England. He then reiterates his refusal to state the port to which he was destined when he left Nassau, cleared for St. Johns. In answer to another interrogatory, he says that the Granite City, when she first came to Nassau from Glasgow, took her cargo to Wilmington, N. C., running the embargo, although fired at, and discharged it there, that place being blockaded; that she then took in there a cargo of cotton, and returned with it to Nassau, where it was discharged; and that she then took on board

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The Napoleon.

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the lading captured with her. On the closing of the examination, he recalled his refusal to answer to what port the prize was destined on her first departure from Nassau, and made reply "that he was bound to run the blockade into some confederate port, wherever he could get in, and if he could not get in, to go elsewhere." This testimony has been given in fuller detail than was strictly necessary, in order to show that the business of the vessel was the deliberate and persistent violation of a public blockade.

Gibson, the cook, joined the vessel at Nassau only ten days before her capture. He says that he knew, and that every one else knew, that she was going somewhere else than to her declared place of destination, and was to return to Nassau. The steward, Campbell, gives no testimony having direct relation to the charge against the vessel.

The evidence very clearly establishes the culpability of the voyage. The destruction of the ship's papers when she was pursued by the capturing vessel, her plain purpose and attempt to carry out the voyage then undertaken by violating anew the blockade of the enemy's coast, and her having, as avowed by her master, effected that act in the preceding voyage, amount to complete proof of the criminality of the enterprise she was engaged in, as well as of the illicit character of her last voyage.

A decree is rendered condemning the vessel and cargo to forfeiture.

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THE SCHOONER NAPOLEON.

Rehearing, on further proofs furnished by the claimant of seven-eighths of the vessel.

One-eighth of the vessel being condemnable in any event, the libellants have a right to enforce their remedy against her as an entirety, whether they retain or remit the proceeds.

In the case of a vessel seized as prize by reason of her having violated a blockade, or been used by the enemy for warlike purposes, it is of no consequence that she was so employed without the knowledge or approbation of her owner.

In time of war, a neutral vessel is subject to forfeiture if run into a blockaded port by her commander, independently of proof of instructions by or actual intention on the part of her owner to evade the blockade, he having previous due notice of its existence and efficiency.

The former decision in this case confirmed, for these reasons:

1. The vessel entered the port where she was captured, by violating the blockade.
2. One-eighth of the vessel was enemy property, lawfully seized in the enemy's country, in actual battle, by the United States military forces.
3. The remaining seven-eighths of the vessel, if legally the property of the claimant, is subject to forfeiture for holding commercial intercourse with a rebel State.

(Before BETTS, J., May, 1863.)

BETTS, J.: This case comes before the court, by consent of the counsel for both parties, in effect as upon a rehearing on further proofs, but without the formality of an issue on pleadings and proofs following

the first hearing, and the decision on the libel, and the evidence taken *in preparatorio*. In that state of the proceedings, the vessel was condemned, as lawful prize of war, in December term last. It thus clearly belongs to the claimant to show, by further proofs, collated with such as shall be given by the libellants, that the vessel is not guilty of the offence charged in the libel. This burden the claimant assumes on his side, and insists that he has fulfilled it in the affidavits produced and read in his behalf; while the libellants contend that the weight of evidence, direct and presumptive, remains against the claimant, unchanged, and justifies the condemnation rendered. (*The Vigilantia*, 1 Ch. Rob., 1; *Harmony v. The United States*, 2 How., 210.)

It appears that the vessel was originally owned by a resident of North Carolina, who, in September, 1860, conveyed seven-eighths of her to the claimant, in satisfaction of a debt secured to him on that vessel. The vendor retained the possession and use of her subsequently, on different voyages, until he finally returned with her into port, in August, 1861; and it is not shown that his possession was afterwards changed until her capture by the libellants.

It is to be remarked, that no legal exception is taken against the condemnation of one-eighth of the vessel. That portion of the decree must, therefore, stand unaffected by this rehearing; and the lien or special interest of the claimant in the residue of the vessel, if established, does not intercept or qualify the right of the United States to enforce its remedy against the vessel as an entirety, whether they retain or remit the whole proceeds involved in the condemnation.

The question before the court on this trial is as to the innocence or guilt of the vessel, as if the transaction in which she was implicated was one of personal volition on her part; and that inquiry may be resolved quite independently of the individual intentions or cognizance of the parties who are made pecuniarily responsible for acts of the vessel or of the property, which incur or have imputed to them forfeitures because of such acts. It is, accordingly, not sufficient for the claimant, in defence of this suit, to establish his own loyalty of character, and his disapproval of the connection of the vessel with the enemy, or with the illicit conduct alleged against her. The evidence on the first hearing was amply satisfactory in that respect, without the corroboration of subsequent proofs, which also show his unquestioned patriotism and rectitude as a citizen and a merchant, and that his most earnest efforts were exerted to prevent the prize from being in any way employed in aid of the enemy. But, notwithstanding his individual in-

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The Napoleon.

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tegrity, the vessel is responsible in law, *in rem*, for the malfeasance of the agent who had the control of her, in violating the penal laws of navigation. The most distinguished and unblemished reputation on the part of a ship-owner will not protect his vessel from confiscation, when it is engaged, though through untrustworthy agents, and without his knowledge, and against his prohibition, in illicit employments, in infractions of revenue and fiscal laws, and, pre-eminently, in violating the laws of war. The *res culpabilis* has meted out to it the mulct or confiscation legally applicable to an agent acting voluntarily in violation of law. Ships and cargoes of the largest values are constantly subject to forfeiture, without regard to the intentions of their owners, for being the means of smuggling property of trifling value into port, in evasion of restrictive laws of trade; and, in time of war, a neutral ship is subject to forfeiture if run into a blockaded port by her commander, independently of proof of instructions by or actual intention on the part of the owner, to evade the blockade, he having previous due notice of its existence and efficiency. In this case, no necessary intendment of law can arise, that the vessel, after the execution of a bill of sale of her to the claimant, was tortiously perverted from the possession and use of the claimant, nor that she did not remain with her original owner, and at his order, with the assent of the claimant.

In this posture of the case, if the further proofs produced should establish all the facts alleged in respect to the equipment and acts of hostility charged against the prize vessel within the waters of North Carolina, they would fail to exonerate her from the decree of condemnation rendered against her on the first hearing; because she was, in fact, partly enemy property, and stationed in an enemy port, and was captured during an actual attack on such port by the United States forces, whilst it was defended by the military power of the enemy, and by the presence of the captured vessel; and, also, because the interest of the claimant in the vessel, entire or fractional, is confiscable under the general prize law, and by special enactments of Congress, because the vessel had commercial intercourse with an enemy port. (Chitty's Law of Nations, 1; 12 U. S. Stat. at Large, 257, §§ 5, 6; Id., 319, § 1.)

The particular point to which the further proof was prayed and offered by the claimant is, to show that the evidence *in preparatorio* was misapprehended by the court, or was grossly inaccurate in itself, so far as respects any illicit conduct of the vessel in aid of the enemy, and, most essentially, in the representation that she bore arms, or was in



any way in a condition, at the time of her capture, to help the enemy in attacking the United States forces, or in defending the place they were assailing. To this end, various affidavits have been put in by the respective parties, taken *ex parte*, in North Carolina, since the decision of the cause on the first hearing. In most instances they are very loose, and wanting in precision in their statements and structure, and are subject to distrust, in being a literal repetition, by different witnesses, of facts ascertained by them at separate times and distant places, and without concurrent examinations. The prominent purpose aimed at by the claimant, in these proofs, is to contradict or countervail the evidence in *preparatorio* tending to prove that, when the vessel was captured, she was abandoned by all hands, leaving only her arms on board, which consisted of three 24-pounder guns and one 32-pounder, which were taken out of her by Captain Rowan, commander of the squadron, and put on shore at Newbern; and, by the testimony now offered, to disprove that the prize was armed and had artillery on board when captured. It does not appear to me that that fact is in any way material to the issue on trial, any further than as it may bear upon the credibility, in a general point of view, of the witnesses who give the evidence. The criminality of the vessel would be more certainly manifested if, when captured, she was fitted, manned and armed as a vessel-of-war, and was, in that way, taking part with the enemy; but she would be no less guilty and confiscable if she united in aiding and promoting the cause of the rebels against the government, otherwise than with arms and soldiers on board. Every act of intentional aid and assistance to the enemy, in whatever manner rendered by means of the vessel, would be visited upon her as an agent *de facto* in the offence, by the same consequences of condemnation and forfeiture as if it were committed by aggressive force and open hostilities. It, therefore, becomes of small moment to weigh critically the testimony with respect to the state of the vessel, in point of armament, at the instant of her capture; and it is a reasonable and fair interpretation of the affidavits given on both sides, except in two instances only, that the deponents speak of matters which must be derived from and known to them by general repute or belief, as having occurred within their personal knowledge, because it nowhere appears that they were members of the ship's company, or individually on board of her during the time she was within the waters where she was captured, or had been so since the war commenced. This circumstance is not adverted to as detracting from the general title of the witnesses to credit, but to mark

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The Sue.

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the character of the evidence, as founded upon what the parties regarded as true, according to common acceptance and belief, without assuming to assert it to be correct of their individual knowledge.

Admitting, then, to the fullest extent the probity of the claimant in all his personal transactions in respect to the vessel and her voyages, and his loyalty and fair conduct towards the laws and the rights of his own government, so far as his personal intentions or authority were concerned, the considerations set up and pressed in his behalf cannot be admitted as constituting a legal defence to the suit. They may supply a forcible ground of appeal to the executive department of the government, in respect to the ulterior disposition of the proceeds of the prize, but the judiciary have no competency to control that matter. In my judgment, therefore, the former decree in the suit must stand and be executed; because the court must judicially recognize that, in August, 1861, when it appears the vessel entered the ports of North Carolina, they were in a state of efficient blockade, publicly notified, and continued so to the time of the arrest of the vessel; because one-eighth of the vessel was enemy property, lawfully seized in the enemy country, in actual battle, by the United States military forces; and because the remaining seven-eighths of the vessel, if legally the property of the claimant, is subject to forfeiture for holding commercial intercourse with a rebel state.

Decree accordingly.\*

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THE SCHOONER SUE AND CARGO.

Vessel and cargo condemned for an attempt to violate the blockade.

(Before BETTS, J., May, 1863.)

BETTS, J.: The above vessel and cargo were captured as prize, March 30, 1863, at sea, off Little River inlet, by the United States steamer Monticello, near the coast of North and South Carolina, and were sent to this port for adjudication. The writ of attachment and the monition were duly served, and were returned April 28 thereafter, and proclamation and default thereon were taken in open court. The vessel's papers, found on board of her on her capture, were a certificate of British registry, dated at Nassau, N. P., February 21, 1862, showing that

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\*An appeal from this decree was taken to the Supreme Court. Subsequently, the Secretary of the Treasury released seven-eighths of the vessel to the claimant, and the appeal as to the rest was abandoned.

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*The Douro.*

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she was owned by Augustus John Adderley of that place; a shipping agreement, dated March 16, 1863, showing that she was bound on a voyage from Nassau to Beaufort, N. C., and back to Nassau and other port or ports; and her clearance at the same port, dated March 16, 1863, for the same destination, with her cargo and the bill of lading thereof on board. The master, the mate, and the cook were examined *in preparatorio* as witnesses, and testified that the vessel was captured off the coast of South Carolina, about 35 miles to the south of Wilmington; that she was English-owned, and was bound for any confederate port she could reach; that they knew of the blockade of the ports along that coast; and that all understood that the vessel was destined to run the blockade.

The case admits of no question, on the proofs, that the vessel *was*, when seized, intentionally engaged in an attempt to violate the existing blockade of the coast.

A decree of condemnation of the vessel and cargo is, accordingly, rendered.

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THE STEAMER DOURO AND CARGO.

The court overruled the defences set up by the claimants, namely, that the blockade of the port of Wilmington, N. C., was not efficient, and that a vessel-of-war of the United States, not stationed in guard of a blockaded port, had no right to seize a vessel violating such blockade. Vessel and cargo condemned for a violation of the blockade. Spoilation of papers.

(Before BETTS, J., May, 1863.)

BETTS, J.: This vessel and cargo were captured March 9, 1863, at sea, off Cape Fear, by the United States gunboat Quaker City, and were sent to this port for adjudication. A claimant of the vessel, and other claimants of the cargo, intervened and filed formal claims, resting upon like positions of fact and law—that the vessel and cargo were the property of British subjects when seized; that she had a legal right to enter into and depart from Wilmington, N. C.; that the port was not under an efficient blockade; that the capture was unlawfully made, on the high seas, distant from any American port; that the capturing vessel was not one of the blockading squadron, and possessed no authority to seize this vessel or cargo; and that neither vessel nor cargo belong to citizens of the United States. The case was submitted without oral argument on either side, and upon only a statement of conclusions on the part of the United States.

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The Mary Jane.

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The questions of law with respect to the existence of the blockade of the place visited by this vessel, and its efficiency, and the authority of a vessel-of-war of the United States, not stationed on guard of a blockaded port, to seize a vessel violating such blockade, has been too frequently determined by this court, during the continuance of the present war, to require a repetition of that course of decisions, until the law is called in question by a judicature of higher authority.

The inquiry, then, is only, whether the evidence establishes against the vessel and cargo the commission of the offence alleged.

The master testifies, on his examination *in preparatorio*, that the vessel was captured on the morning of March 9, 1863, about 25 miles east of Frying Pan shoals on the coast of North Carolina, because she had been running the blockade; that she sailed from Liverpool to Nassau, and from Nassau, with an additional cargo, to Wilmington, which port she entered February 21; that she there discharged her cargo and took in a return cargo for Nassau, and was captured on going out with that on board; that she brought out with her a confederate pass, authorizing her to pass the forts; that many of the ship's papers, brought out of Wilmington, were burned on board of her; and that he knew of the war, and that Wilmington was blockaded, when he entered and left that port. The mate and the supercargo do not contradict the evidence of the master, and concur with him in material points.

The whole testimony shows conclusively that the vessel entered and departed from the port of Wilmington, knowing that it was in a state of blockade, and destroyed her papers while under chase by her captor.

The case is clearly one which demands the condemnation of vessel and cargo, for a wilful violation of the blockade.

Decree of forfeiture accordingly.\*

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THE SCHOONER MARY JANE AND CARGO.

Vessel and cargo condemned for an attempt to violate the blockade.

False papers as to the voyage of the vessel.

A rehearing on further proofs denied to the claimant.

(Before BETTS, J., May, 1863.)

BETTS, J.: The libel of information charges that the above vessel and cargo were captured, as lawful prize of war, March 24, 1863, on the Atlantic ocean, off New inlet, North Carolina, by the United States steamer Mount Vernon, and sent into this port for adjudication. The

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\* An appeal was taken from this decree to the Supreme Court by the claimants. That court, at the December term, 1863, affirmed the decree of the district court. (See 3 Wallace.)

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The Mary Jane.

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libel was filed April 3, and process of attachment and a monition thereon were, on the same day, issued, and were returned in court on the 21st of the same month. On the 28th of April, 1863, separate parties intervened as owners of the vessel and cargo, and filed, by the same proctor, distinct claims and answers to the libel, each denying that the vessel and cargo are prize of war, and each also giving detailed allegations and statements, as by way of special plea, substantially with common averments. Proofs were taken *in preparatorio* before the prize commissioners, on the 8th and 9th of April, 1863, and the case was submitted to the court for decision, on written briefs and points, by the counsel for the respective parties, on the 28th of May thereafter.

The vessel and cargo having been captured by a blockaded vessel, near the land, and on a course to the blockaded port, the claimants are called upon to justify her position under the circumstances.

The defence is attempted to be maintained upon the documentary proofs found on the vessel, and the testimony of the witnesses examined *in preparatorio*, and the fitting reply to that defence is supplied by the same testimony. The vessel was of British build and ownership, as shown by a certificate of British registry to William A. Fraser, of Pictou, N. S., dated at Halifax, January 24, 1863. The only other papers produced from the prize, on her seizure, are the shipping agreement between W. A. Fraser, named as master, and five men, dated at Halifax, January 26 and 27, 1863, for a voyage to ports in the West Indies, and back to the port of Halifax, term of time not to exceed six months; a note, indorsed thereon, of the arrival of the agreement at Turks Island, February 25, 1863, and its deposit there, February 28; a letter of instructions, from Thomas S. Reid to Captain Fraser, of the schooner Mary Jane, dated Halifax, January 23, 1863, directing the master to proceed with his cargo to Turks Island, as by charter-party of that day, and there trade off or sell the goods shipped on the vessel, and purchase therewith a cargo of salt, and sail with the same for Halifax, any balance, after paying for the salt, to be remitted to the shipper; a clearance at the port of Nassau, for Halifax, given March 9, 1863, for 8 barrels of flour, 9 barrels of pork, 1 bucket of butter, 5 boxes of soap, 12 boxes of fancy soap, and 1,268 bushels of salt; and a custom-house certificate, dated at Turks Island, February 28, 1863, that Captain Fraser, of the British schooner Mary Jane, having on board the above-mentioned cargo, (except the salt,) had entered the same at that port,

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The Mary Jane.

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and had also cleared the same there for Nassau, with the addition of the before-mentioned quantity of salt.

Fraser, the master, testifies that the vessel and cargo were captured March 24 last, in five fathoms of water, between six and seven miles north of Fort Caswell, Wilmington, N. C., and fully a mile off from land; that he owned the vessel; that she was of about 50 tons burden; that Reid, of Halifax, owned the cargo; that the vessel was sailed under a charter-party; that the vessel had bills of lading of her cargo on board when captured, all of which were taken by the captors; that he knew that Little River inlet and the southern coast were under blockade, before he left Halifax; and that the vessel had suffered the loss of water in a storm, and was seeking the blockading squadron for relief when captured.

Brown, the mate, testifies that the vessel was captured about four miles off from Wilmington; that she was bound to Halifax; that he understood she was going, when captured, to the blockading vessels, to get water; that there was no charter-party signed; that he knew that the ports along the southern coast were blockaded; and that the vessel did not alter her course on seeing the blockading squadron.

Power, a passenger, says that no guns were fired on the capture, except from a fort on shore; that he supposed that the vessel was bound from Nassau to Halifax; that, when she was chased by the blockading vessels, she was keeping along the land; that she then altered her course, so as to bear up towards the pursuing ships; and that he does not know whether her course was at all times towards Halifax.

This recapitulation of the occurrences of the voyage, and of the statements of the three witnesses examined, leaves, it appears to me, but one conclusion to be reasonably deduced from the facts. This small British craft started from Halifax on a trading voyage, purporting to be from her home port to Turks Island and back to Halifax, with instructions to dispose of her outward cargo at Turks Island, and, out of the proceeds, purchase a cargo of salt, and bring the same back to Halifax, the balance of the proceeds, after paying for the salt purchased at Turks Island, to be remitted to the shipper of the outward cargo.

After making the run to Turks Island, and performing her mission at that place, the vessel was cleared at Nassau, for her return voyage, on the 9th or 10th of March, and was captured off Wilmington, N. C., on the 24th of the same month, by the United States ship-of-war

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The Mary Jane.

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before named, which was guarding the blockade of that port. No log-book or other document furnishes further evidence than her clearance does of the day of her departure from Nassau, or of the course she was to pursue thence. It is to be intended that the passage was made under no circumstances of extraordinary detention or delay, and was most probably effected with all the expedition of a direct voyage. It appears, from the examination of the witnesses on board, that the vessel was discovered on the morning of the 24th of March by the capturing ship, and was immediately chased by her, when found crawling along close to the shore, bearing in towards the land, within about a mile of the fort off Wilmington, and was there captured, whilst the guns of the fort were brought to bear against the United States ship, in an attempt to cover and defend the prize with the enemy's fire. The prize was found to be laden with provisions and soap, and chiefly with commodities of the first importance to the enemy at the port she was about entering, and to the enemy in that whole section of country. She carried no letter of instructions, no invoice or bill of lading, no manifest of her cargo, and no document in relation to the cargo or voyage, other than her clearance at Nassau. She was, as before stated, proceeding without any log-book or other memorandum of her time of departure, her destination, or the course of her route; and the only evidence given to the court, in respect to her position, is in the statement made by the master, on his examination *in preparatorio*, that she encountered a violent gale, after leaving Nassau, in which his water-casks were stove or lost, and that he was compelled to bear away from his true line of navigation, and go in pursuit of the blockading squadron off the Carolina coast, for relief, under the necessity so incurred. He also avers that he bore up for that squadron, with the intent to speak them as soon as they were discovered by him. Neither of the other two witnesses speaks of such necessity having occurred, or states that the vessel had been put off her true course; and one of them asserts that the prize continued her way, under the pursuit of the United States ship-of-war, until the chase ended by her capture.

The case appears to me to be one of a manifest attempt by the master of the prize, under falsified papers and representations touching his voyage from Nassau, to run the blockade of Wilmington, N. C., he well knowing that the port was in a state of efficient blockade. A decree of condemnation and forfeiture against both vessel and cargo must be entered.

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The Neptune.

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The counsel for the claimants, in his brief of argument, solicited leave to have a rehearing, upon further proofs, in this case. The impression of the court is, that the evidence upon the first hearing is so decidedly against the defence attempted to be established as to afford no reasonable ground for opening the case, to allow a new issue and a hearing on further proofs.

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## THE SLOOP NEPTUNE AND CARGO.

Vessel and cargo condemned as enemy property, and for a violation of the blockade.

(Before BETTS, J., June, 1863.)

BETTS, J.: This vessel was captured, as prize of war, April 19, 1863, on the Atlantic ocean, off Charleston harbor, S. C., by the United States sloop-of-war Housatonic. The vessel was, on her capture, appraised at the sum of \$150, and left at Port Royal, S. C., by the captors. The cargo was brought to this port for adjudication, and was here libelled, on the 5th of May thereafter. It was on the same day arrested by due process of attachment and monition, returnable May 26, and on that day the writ was duly returned in court, and a decree by default was thereupon rendered in court.

The ship's papers show that the vessel was, on the 4th of April, 1863, registered at Charleston, in the Confederate States, in the custom-house of the enemy, as the sole property of Samuel D. Stoney, of that place, and that she there shipped a crew for Nassau, N. P., with a manifest and bills of lading, dated April 11, 1863, of a cargo of cotton and spirits of turpentine, from that port to Nassau, N. P.

The master of the vessel deposes, on his preparatory examination, that the vessel sailed from Charleston with the confederate colors, and had no others on board; that she was captured off Charleston harbor, April 19, 1863, in the night; that he was a resident of Charleston, and was appointed to the command of the vessel by her owner, in that port; that he, the master, owned part of the cargo, and the owner of the vessel the residue; and that both of them knew that the port was under blockade at the time by the United States forces. No question is earnestly maintained, upon the pleadings and proofs, as to the guilt of the vessel and cargo. A regular default against both has been taken, and a decree of condemnation and forfeiture must be entered against both.

Decree accordingly.



## THE SCHOONER RISING DAWN AND CARGO.

This vessel was seized as prize and taken to Key West, and released by the prize court there on bonds, and permitted to proceed on her voyage. She was afterwards arrested again as prize, for an alleged attempt to violate the blockade after leaving Key West; *Held*, that her release at Key West did not absolve her from her obligation not to violate the blockade afterwards.

Approaching a blockaded coast from necessity.

Vessel and cargo condemned for an attempt to violate the blockade.

Leave given to the claimants to move within four days for a rehearing on further proofs.

(Before BETTS, J., June 25, 1863.)

BETTS, J.: This vessel and cargo were captured, as prize of war, March 25, 1863, at sea, off the coast of North Carolina, by the United States gunboat Mount Vernon, and were sent into this port for adjudication. They were libelled in this court for condemnation, April 14 thereafter. The British consul intervened in the suit, and filed his claim in behalf of British owners, May 12 thereafter, and the case was submitted to the court on written briefs, by the counsel for the respective parties, June 8, 1863.

The vessel and cargo were British property, and her crew were British subjects. She was lying in the port of Nassau, N. P., in December last, and, about the 5th of that month, was despatched from that port to Key West, under her master, Ryan, with a cargo of salt, laden on board by Sawyer & Menendez, of Nassau, who appointed her master, and she was to proceed from Key West with that cargo to New York. On her passage from Nassau to Key West she was seized by a United States ship-of-war, and taken as prize into the port of Key West, and delivered into the custody of the prize court in that district. By the order of that court, under the proceedings in prize, the vessel was released from seizure, on depositing in court bonds for the appraised valuation of the vessel and cargo, and was permitted to prosecute the voyage to New York, carrying the same cargo with her. The foregoing facts are authenticated by official documents found with the vessel on her last capture, March 25, 1863. She proceeded to sea with her cargo, from Key West, for the port of New York, March 15, and, on the 25th of the same month, was captured and sent into this port, with the same cargo on board. The libellants insist that she was intercepted in making an attempt to violate the blockade of the coast of North Carolina. The defence set up thereto is: (1.) The exemption, by law, of the vessel and cargo, under the preceding facts, from arrest for the cause alleged, after her restoration by the proceedings in the prize court at Key West; and (2.) That

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The Rising Dawn.

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legal cause of justification is shown for the approach of the schooner to the blockaded coast, because of the state of necessity for immediate relief in which she was placed at the time of her apprehension. It is alleged in the evidence of the master, upon his preparatory examination, that at the time of his capture he was in sight of the North Carolina coast, and in the vicinity, as he supposes, of Wilmington, and that he was forced to that place by violence of weather, the want of water, and injuries sustained in his sails, after his departure from Key West, rendering it necessary for him to obtain relief. The whole tenor of the master's testimony on that subject is exceedingly indefinite and unsatisfactory, and strongly inconsistent with the entries and statements made upon the log of the vessel, so long as those entries continued. The master and mate were aware of the existence of the blockade of the place the vessel was endeavoring to enter when she was seized, and no colorable excuse is established in the facts, nor is any intimated, for her being in the position at which she was captured, except the argumentative suggestion, that, as she was on a voyage from Key West to New York, authorized by the action of the prize court, she became impliedly discharged and relieved from the responsibility she would have incurred had that been her original and continuing voyage. I cannot perceive any distinction or palliation, whether the inception of the voyage was at Nassau or at Key West, or whether the vessel was pursuing an intermediary course through both ports, with the interruption of a positive arrest and a conditional release on bail. That release cannot be claimed to amount to a discharge from the obligation to avoid carrying articles contraband of war to an enemy port, or violating an embargo.

If the proceedings in the prize court at Key West were equivalent to the actual forfeiture of the vessel and the transfer of her past ownership to other hands, she still remained subject to the public law, and liable to confiscation for attempting to enter a blockaded port, if remaining a neutral, or for carrying on trade or traffic with the enemy, if a home bottom. I think it clear, upon the proofs produced on the trial, that the vessel left Key West, with her cargo of salt, with design to transport the same to the blockaded port she was actually attempting to enter when arrested, it being well known to the officers and crew on board at the time that the place was then under an efficient blockade. I forbear rehearsing in further detail the evidence submitted to the court on the hearing, and order a decree of condemnation and forfeiture of the vessel and cargo to be entered, with leave to the claimant to move

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The Emeline—The Antelope.

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the court, within four days from the entry and service of notice of the decree, for a rehearing in the suit, upon further proofs, according to the usual procedure in such cases.

Order accordingly.

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THE SLOOP EMELINE AND CARGO.

Vessel and cargo condemned for a violation of the blockade.

(Before BETTS, J., June 25, 1863.)

BETTS, J.: The above sloop and cargo were arrested and libelled, May 26, 1863, as prize of war, having been captured off Charleston harbor on the 16th of May, ten days previously, by the United States ship-of-war Courier, and brought into this port for adjudication. No person intervened, or claimed the vessel or cargo, and a default against both vessel and cargo has been entered. The master testifies, on his examination *in preparatorio*, that the vessel belongs to R. T. Walker, of Charleston; that Walker appointed him master, and delivered the vessel to him there; that she was captured twenty-two hours after leaving Charleston, for running the blockade; that she was laden with cotton and turpentine belonging to the owner of the vessel, except that one bale of cotton and one barrel of turpentine were owned by the master; that the vessel was bound to Naseau, N. P.; that she brought no papers whatever with her; that the master had no papers with him relating to the vessel or cargo, and knows nothing about them; and that he knew of the war and of the blockade of Charleston at the time he sailed thence. No evidence contradicting that of the master was given by the two seamen examined.

The testimony affords clear proof that the vessel, with knowledge of the blockade, was carried out of Charleston at the time alleged, with intent to evade it.

A decree condemning the vessel and cargo to condemnation and forfeiture must be entered.

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THE SCHOONER ANTELOPE AND CARGO.

Vessel and cargo condemned for having false papers as to their destination, and for an attempt to violate the blockade.

(Before BETTS, J., June, 1863.)

BETTS, J.: This vessel and cargo were captured, March 31, 1863, by the United States steamer Memphis, as prize, and were sent into this port for adjudication. They were here libelled, April 23, 1863.

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The Angelina.

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Default for the non-intervention of any claimant or defence having been regularly taken in court, the preparatory proofs and the vessel's papers were submitted to the court on the part of the libellants, with a demand for judgment against the vessel and cargo.

No papers relating to the vessel and cargo or the voyage were found on board of her, except the clearance of the vessel at the port of London for Nassau, N. P., January 15, 1863, and letters of introduction of the master of the vessel, William Brain, from a Mr. Martin, assuming to be the owner of the schooner, and recommending the vessel and the cargo of salt on board of her to a Mr. Hart, of Nassau, for advice and directions as to the business of the voyage. The mate of the vessel, in his examination *in preparatorio*, says that the master and the crew of the vessel belonged to England, and shipped from London to Nassau, but that he understood that the voyage was not to be to Nassau, but to some other port on the continent of North America; that her cargo was all salt; that London was her last clearing place; that she was captured near Fort Sumter, going into Charleston harbor; that he and the master knew that that port was then under blockade; that, when first pursued, the Antelope was endeavoring to enter Charleston; and that she tried to escape by getting into Bull's bay.

The master, William Brain, confirms the evidence of the mate, and says that the vessel was captured trying to run the blockade of Charleston; that he knew of the war and of the blockade of Charleston, and presumes that the owner of the vessel did also, when he sailed; and that he was bound to run the blockade at Charleston, and steered for that purpose.

All the evidence is concurrent and conclusive that the nominal clearance of the vessel from London to Nassau was simulated and false, and that the voyage from London was set on foot and pursued with a design to violate the blockade of Charleston.

A decree is pronounced for the condemnation and forfeiture of the vessel and cargo, because of false papers, and an attempt to run the blockade of Charleston, in her destination and procedure.

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THE SLOOP ANGELINA AND CARGO.

Vessel and cargo condemned as enemy property, and for a violation of the blockade.

(Before BETTS, J., June, 1863.)

BETTS, J.: The above-named vessel, with her cargo, was captured as prize, May 16, 1863, by the United States ship Courier, at sea, off

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The Odd-Fellow.

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Charleston, South Carolina, and was sent into this port for adjudication. She was here libelled as prize, and, no one intervening in court on the return of the monition as duly served, a decree of default was rendered in the suit. The papers found on the vessel, namely, an enrolment in Charleston, April 16, 1863, to F. W. Claussen, a citizen of the Confederate States, under the authority of those States, a manifest of the cargo of cotton exported in her for Nassau, and a clearance of the vessel at the port of Charleston, of the same date, prove the vessel and cargo to be enemy property. The testimony of the master of the vessel *in preparatoris* proves that she was captured, as before stated, about forty miles off Charleston harbor, on the 16th of May, 1863, for having run the blockade of that port; that she carried no colors, but was cleared under the confederate authority at Charleston; that the crew and the cargo came from Charleston; that the vessel was built there; that she had been waiting there, from April 25 preceding, for a chance to run out; that the master of the vessel and the owners of the cargo knew of the war and of the existence of the blockade; and that the vessel was run out to evade the blockade. The testimony of the other witness is to the same effect, the evidence all concurring in the proof that the vessel designedly and secretly escaped from Charleston, in violation of the blockade then existing and in force there.

It is, accordingly, ordered that a decree of condemnation and for forfeiture against the vessel and cargo be entered.

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THE SCHOONER ODD-FELLOW AND CARGO.

Vessel and cargo condemned as enemy property, and for a violation of the blockade.

(Before BETTS, J., June 29, 1863.)

BETTS, J.: This vessel and cargo were captured, as prize, at sea, off Little river, North Carolina, by the United States gunboat Monticello, April 15, 1863, and were duly libelled for condemnation in this court May 19 thereafter. No one intervened to claim the property. The master, who is the owner, testifies, on examination, that he resides, with his family, in Wilmington, North Carolina; that he owns the vessel, and sailed her at the time of her capture; that she ran the blockade out of Wilmington, about 5 o'clock a. m., on the 15th of April, 1863; that she came out under confederate colors, and was

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The Levi Rowe.

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bound to Nassau, N. P.; and that the capture was made near Little river, on the North Carolina coast. The witness seems to say, in answer to the twentieth interrogatory, that "the papers she had on board were burnt, torn, thrown overboard, destroyed, or concealed," but the writing is so indistinct that it is difficult to distinguish whether those statements are asserted or denied by the witness. He says that he knew that the port of Wilmington was blockaded; that he intended, when he came out, to elude the blockade, if he could; and that the cargo was the manufacture and produce of North Carolina. The evidence of the other two witnesses furnishes no defence of the vessel, nor is the case proved by the master changed in her favor.

The prize was unquestionably enemy property, and was wilfully carried out to sea, in violation of the blockade of Wilmington.

A decree of condemnation and forfeiture must be entered against the schooner and cargo.

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THE SCHOONER LEVI ROWE AND CARGO.

On further proofs, vessel and cargo condemned for an attempt to violate the blockade.

(Before BETTS, J., June 29, 1863.)

BETTS, J.: This suit was brought to hearing in January term last upon the preparatory proofs theretofore taken therein, and on the ship's papers and the documents captured with her at the time of her seizure as prize, no claimant having intervened in her defence. It was then considered by the court that the evidence presented against the prize, on the part of the libellants, was inadequate in law to authorize the condemnation prayed for. The court, being thereupon moved by them, made an order that they have one year from that time within which further evidence might be presented by them to the court "as to the point or place of the capture, and also as to the purpose of the voyage, and such other or further proof as they may be able to produce." The libellants, in pursuance of said order, took, before one of the prize commissioners of this court, on the 10th day of June instant, the deposition of Samuel B. Hoppin, an assistant surgeon in the United States navy. He testifies that he was on board of the United States gunboat Mount Vernon, being attached to her, about the 29th of November, 1862, and witnessed, at that time, the capture of the above prize by said gunboat; that the capture was made off New Topsail inlet, off the coast of North Carolina; that,

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The Gertrude.

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when taken, the prize was heading or running directly into Old Topsail inlet, which then bore west about four miles; that New Topsail inlet, at the time of boarding and seizing the schooner, bore northwest by north, from three to three and a half miles; that the prize was, when discovered, heading, with a fair wind, directly into New Topsail inlet; that, as soon as she saw the Mount Vernon, she went about, and headed out from the shore; and that, after the capture, he had several conversations with the supercargo of the vessel, captured in her, who told him that he was aware of the blockade, and had run the blockade of Charleston and Wilmington several times, and that the schooner intended to run the blockade into Wilmington. The further proofs so furnished in the case show conclusively the illicit character of the voyage upon which the schooner was engaged at the time of her capture.

A decree of condemnation and forfeiture must, accordingly, be entered against the vessel and her cargo.

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THE STEAMER GERTRUDE AND CARGO.

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Vessel and cargo condemned for an attempt to violate the blockade, and because of false papers as to their destination, and because the cargo was partly contraband of war, on transportation to a port of the enemy.

(Before BETTS, J., July, 1863.)

BETTS, J.: The above vessel and cargo were captured, as prize, at sea, by the United States ship-of-war Vanderbilt, on the 16th of April, 1863; and, due proceedings being thereupon taken before the court, on the return by the marshal of the monition and attachment served in the suit, a decree of default, for want of an appearance or answer of any party intervening for the vessel or cargo, has been regularly entered.

Upon papers captured on board of the vessel, and the proofs in *preparatorio*, the facts in the case appear to be, that she had a certificate of British registry, executed at London, January 10, 1863, to Thomas Sterling Begbie, of that place, she being of British build the same month. On the 8th of April, 1863, a shipping agreement was made between James Raison and a crew for a voyage in said vessel from the port of Nassau to any port or ports in North or South America, or the West Indies, or Bermuda, and back to the port of Nassau, not to exceed three months. On the same day she cleared from said port of Nassau, for St. Johns, N. B., with a miscellaneous cargo, including contraband of war, shipped the same day by Henry Adderley &

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The Glen.

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Co., at Nassau, for St. Johns, N. B., deliverable to order, with a letter of advice from the shipper, dated April 7, 1863, addressed to W. J. R. Wright, at St. Johns. No log-book was found on board.

The master, the third mate, and the engineer of the vessel were examined as witnesses. The prize was captured about 8 o'clock a. m., on the 16th of April, off the island of Eleuthera, after three hours' chase. Four guns were fired at her by the chasing ship to bring her to. The master says that he understood the object, but kept on his course, endeavoring to get out of the way; that he was bound, by his papers, to St. Johns, but was going to Charleston, if he could get there; that his cargo, loaded at Nassau, consisted of powder, tin plate, boots, blankets, and hops; that he and the owner knew all about the war and the blockade of Charleston; that he attempted to enter that port knowing that it was blockaded by the United States government; that there was a passenger on board—a Charleston pilot—under an assumed name; that the witness was generally steering his vessel for Charleston; and that he had attempted, during the voyage, to enter Charleston or Wilmington, or wherever he could get in, and was chased off. The other two witnesses give no testimony contradicting the master, or favoring the innocence of the vessel.

It accordingly is proved satisfactorily to the court, that the voyage was got up, and prosecuted down to the seizure of the vessel, with the intent and endeavor to break the blockade; that her papers as to her destination were simulated and false; and that she was carrying cargo contraband of war, with the design to convey it to the aid and use of the enemy, with full knowledge of the criminality of the enterprise.

A decree of condemnation and forfeiture of the vessel and cargo must be entered.

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THE SCHOONER GLEN AND CARGO.

Vessel and cargo discharged from seizure and restored to the claimant, with costs and damages, because of a wrongful arrest.

(Before BETTS, J., July, 1863.)

BETTS, J.: This vessel, and cargo were captured at sea, June 20, 1863, by the United States gunboat Columbia, and were sent into this port for adjudication. The defence to the action is, that the vessel was a



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The Glen.

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British bottom, lawfully on a voyage from Yarmouth, Nova Scotia, to Matamoras, Mexico, on the voyage upon which she was seized.

The papers returned with the prize are, a certificate of British registry executed to Nehemiah K. Clements, of Yarmouth, Nova Scotia, as owner of the vessel, showing that she was built at Nova Scotia August 4, 1859; a shipping agreement, entered into with the crew in November and December, 1862, for a voyage from Yarmouth, Nova Scotia, to a port or ports in the British West Indies, thence to a port or ports to which the vessel may lawfully go, for a term not to exceed six months, to her final discharge in Nova Scotia; a certificate of the entry and clearance of the vessel by the British vice-consul at Matamoras, April 22, 1863; a journal or log-account of the voyage of the vessel from Matamoras, commencing in June, 1863; and a manifest of 84 bales of cotton from Matamoras to Nassau, N. P., dated May 23, 1863.

From the proofs *in preparatorio* it seems that the vessel was on her voyage from Matamoras to Nassau, but was a bad sailer, and, owing to the state of the weather, was unable to make her course across the Gulf Stream; that it was attempted by her master, with the consent of her supercargo, to carry her to the port of New York; that her master was attempting so to navigate her when she was seized; that she was not making for any other port; and that when seized she was, as was supposed, from 80 to 100 miles off Cape Hatteras. Her ship's company were all British subjects, and none of them had any interest in the vessel or cargo. The vessel was loaded with cotton alone. No reasonable suspicion against the integrity of the voyage is made to appear upon the testimony, either from her position or her lading, or the conduct of the crew previously, or when she was captured, or her consorting with or being connected with any other vessel or voyage. Nor is it indicated to the court, by any argument, brief, or suggestion on the part of the United States, that the captured vessel committed any culpable act on her voyage.

It is, therefore, ordered and decreed, that the vessel and cargo be discharged from seizure and be restored to the claimant, with costs and damages, because of the wrongful arrest.

Decree accordingly.

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The Isabella Thompson.

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## THE BRIG ISABELLA THOMPSON AND CARGO.

In this case the neutral consignee, at a neutral port, of a cargo delivered there by a vessel which had brought it from a blockaded port of the enemy, in violation of the blockade, acquired a perfect title to it, as against persons who captured it as prize on its subsequent transportation on a neutral vessel, from such neutral port to another neutral port.

Acting on the persuasion that the cargo had been unlawfully brought from a blockaded port, and had been directly laden from the first vessel into the second vessel, the captors acted properly in bringing in the latter vessel and her cargo for adjudication.

Had any solidarity of interests between the two vessels, in the entire voyage from the enemy port to the last neutral port, been established by the proofs, or any complicity between them in the enterprise, the captors might well invoke the judgment of the court in condemnation of the enterprise.

Vessel and cargo released from seizure and restored to the claimants, without damages or costs, with permission to the libellants to move for leave to give further proofs on the above points.

(Before BETTS, J., July, 1863.)

BETTS, J.: This vessel and cargo were captured, as prize of war, June 19, 1863, on the Atlantic ocean, by the United States steamer United States, and were sent to this port for adjudication. James McDaniel, of Halifax, Nova Scotia, intervened and claimed as owner of the brig, and Nehemiah K. Clements, for himself and others, appeared and claimed the cargo.

As in the preceding case, the vessel had a certificate of British registry, given at Halifax, August 5, 1862, as being a British vessel, built in New Brunswick, in 1861, to James McDaniel, of Nova Scotia. She had a certificate of her entry and clearance at Halifax, April 27, 1863, for Nassau, N. P., with a cargo of sundries, and a clearance at Nassau, June 5, 1863, for Halifax, with a cargo of spirits of turpentine and upland cotton, with a letter of instructions, a bill of lading, and an invoice conformable thereto. The cargo was taken on board in the harbor of Nassau. The ship's papers, upon their face, are regular, and in due order.

The master and the ship's company are shown, on the preparatory examination, to be British subjects, and to have no interest in the vessel or cargo. The voyage commenced at Halifax, and was to have ended there. The vessel made no port between Halifax and Nassau on the outward voyage, nor between the same ports on her return voyage, and was not near any port when captured, and had not attempted to enter any port on her return voyage. She was captured off St. George's Banks. All the papers on the vessel are regular and apparently fair.

No evidence is given, on the examination *in preparatorio*, that the cargo of the vessel was procured from a blockaded port by any person

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The Isabella Thompson.

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on board of or interested in the prize vessel, or that it was the property of such a person; and no reasonable color for doubt, or suspicion as to the lawfulness or fairness of the voyage in question is furnished by the evidence in the case, except what arises from the testimony of the cook, Gabriel English. He testifies that the cargo seized was laden into the prize vessel in the harbor of Nassau from the schooner Argyle, which had just run the blockade of Wilmington, bringing that cargo into Nassau; that he understood that the master of the Argyle was part owner of her, and he supposes that he owned part of her cargo also; and that the master was a southern man from Wilmington. This conjecture of the witness cannot affect the ownership of the consignees and shippers of the cargo at Nassau. The neutral consignee at that port acquired a perfect title to the cargo as against the captors, although it was carried to Nassau by runners of a blockade, and the libellants have no legal authority to arrest it on board of a neutral ship while transporting it from a neutral port.

But, acting on the persuasion that the cargo had been unlawfully brought from a blockaded port, and had been directly laden from the blockade-running vessel into the Isabella Thompson, the cruiser might, very naturally, believe that she possessed a rightful authority to intercept such transaction as one falling within the just cognizance of a prize court, and bring in the vessel and cargo for adjudication before that tribunal on such suspicion. Had any solidarity of interests between the Argyle and the Isabella Thompson, in the entire voyage from Wilmington to Halifax, been established by the proofs, or any complicity between the two vessels in the enterprise, the captors might well invoke the judgment of the court in condemnation of the enterprise. Although the evidence fails to make a clear case of illicit dealing on the part of the brig so as to subject her to forfeiture, I think a reasonable cause of suspicion arises out of the testimony, of sufficient force to justify the granting of permission to the libellants to give further proofs to that point, if moved for by them. As the proofs now stand, I shall order the brig and cargo to be released from this seizure, and to be restored to the claimants without damages or costs; but with permission to the libellants, on four days' previous notice to the claimants, to move the court for leave to give further proofs in this suit upon the aforesaid points.

Order accordingly.\*

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\*An appeal was taken from this decree to the Supreme Court by the claimants, so far as it refused to allow them damages and costs. That court, at the December term, 1865, affirmed the decree of the district court. (See 3 Wallace.)

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The Sally Magee—The Stephen Hart

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[July 30, 1863.—*Note.*—The substance of the decisions rendered by the court in the four following suits is announced, in order that parties desirous of seeking a review in any of them may have opportunity for an immediate appeal to the approaching term of the Supreme Court. Some of the suits have been long in prosecution, but have been delayed to this late period by the concurrence of the respective parties or their counsel. The opinions, in detail, cannot be drawn up and put on file until after the summer vacation of the court.]

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THE DARK SALLY MAGEE AND CARGO.

Vessel and cargo condemned as enemy property, the claimants being, at the time of the capture, citizens and residents of one of the seceded States of the Union.

(Before BETTS, J., July 30, 1863.)

BETTS, J.: The above suit, as presented on the hearing before the court, on the pleadings and proofs therein, raised two main questions for the consideration of the court: *First*. Whether the claimants, being citizens and residents of one of the seceded States of the Union at the time of the capture of the above vessel and cargo, had imputable to and impressed upon them the character of alien enemies because of the condition of public hostilities then subsisting between the State of their residence and the United States; and, *Second*, whether, upon the proofs in the case, the claimants possessed such proprietary interest in the cargo captured as to constitute them owners thereof within the rules of the prize law; and, due deliberation being had in the premises, it is considered and found by the court that the aforesaid vessel and cargo so seized were, at the time, enemy property, and that the claimants then possessed the legal ownership thereof; wherefore, judgment of condemnation and forfeiture against the same is ordered.

Decree accordingly.\*

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THE SCHOONER STEPHEN HART AND CARGO.

Vessel and cargo condemned for the following reasons:

1. At the time of her seizure the vessel was laden with and transporting articles contraband of war, with intent to furnish and supply them to the use and aid of the enemy.
2. She was, when seized, navigated with the attempt and design to violate the blockade of ports of the enemy held in lawful blockade by the naval forces of the United States.

(Before BETTS, J., July 30, 1863.)

BETTS, J.: The allegations and proofs of the respective parties in this suit, and the arguments of counsel on both sides therein, being fully heard and considered, and due deliberation had in the premises,

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\*An appeal was taken to the Supreme Court from this decree, as to the cargo, but not as to the vessel. That court, at the December term, 1865, affirmed the decree of the district court. (See 3 Wallace.)

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The Springbok.

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and it satisfactorily appearing to the court thereupon: *First.* That the course of procedure in the suit, in its institution and subsequent prosecution, is regular and valid at law; *Second.* That, at the time of her seizure, the vessel was laden with and transporting articles contraband of war, with intent to furnish and supply them to the use and aid of the enemy; *Third.* That the vessel, when seized, was navigated with the attempt and design to violate the blockade of the port of Charleston and other ports of the enemy held in lawful blockade by the naval forces of the United States; therefore, it is ordered and adjudged, that the said schooner Stephen Hart and her cargo be condemned and forfeited as lawful prize of war:

Decree accordingly.\*

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THE BARK SPRINGBOK AND CARGO.

Vessel and cargo condemned on the following grounds:

1. The vessel was, at the time of her capture at sea, knowingly laden, in whole or in part, with articles contraband of war, with intent to deliver such articles to the aid and use of the enemy.
2. The true destination of the vessel and cargo was not to a neutral port, and for trade and commerce, but to some port lawfully blockaded by the forces of the United States, and with intent to violate such blockade.
3. The papers of the vessel were simulated and false.

(Before BETTS, J., July 30, 1863.)

BETTS, J.: This suit having been heard by the court upon the pleadings, proofs, and allegations of the parties, and evidence legally invoked therein from other cases, and the premises being fully considered, and it being found by the court, therefrom, that the said vessel, at the time of her capture at sea, was knowingly laden, in whole or in part, with articles contraband of war, with intent to deliver such articles to the aid and use of the enemy; that the true destination of the said ship and cargo was not to Nassau, a neutral port, and for trade and commerce, but to some port lawfully blockaded by the forces of the United States, and with intent to violate such blockade; and, further, that the papers of said vessel were simulated and false; therefore, the condemnation and forfeiture of the vessel and cargo is declared.

Ordered, that a decree be entered accordingly.†

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\*An appeal was taken to the Supreme Court from this decree. That court, at the December term, 1865, affirmed the decree of the district court. (See 3 Wallace.)

†An appeal was taken to the Supreme Court from this decree, and was argued at the December term, 1865, but the court held it over till the following term, for decision.

## THE STEAMER PETERHOFF AND CARGO.

Vessel and cargo condemned on the following grounds:

1. The vessel, knowingly laden, in whole or in part, with articles contraband of war, was transporting them at sea, not to a neutral port, for purposes of trade and commerce, within the authority and intendment of public law, but to some other port or place, and in aid and for the use of the enemy, and in violation of the law of nations.
2. The vessel's papers were simulated and false as to her real destination.

(Before BETTS, J., July 30, 1863.)

BETTS, J.: This cause having been brought to hearing before the court, upon the pleadings and proofs, and the issues of law and fact involved therein, and upon questions affecting the rules and doctrines of public law in relation to the case, and the rights and liabilities of the respective parties assured thereby, and the admissibility, relevancy, and effect of the various classes and items of proof heard in the said cause, relating to acts or declarations of parties on board of the said ship on the voyage in question, and being part of her crew or ship's company, or others having authority to act in her behalf, and whether such evidence be direct and positive, or presumptive and inferential, as, also, in respect to acts of misfeasance on the voyage, in the spoliation, mutilation, or concealment of papers transported in the ship on such voyage, or attempts to disguise the character of the cargo on board and its destination, and the premises aforesaid, with the allegations and arguments of counsel for the respective parties thereupon, having been fully heard and understood, it is considered and found by the court:

*First.* That the said steamship Peterhoff, in the premises mentioned, was knowingly, on the voyage aforesaid, laden, in whole or in part, with articles contraband of war, and had them in the act of transportation at sea;

*Second.* That her voyage, with the said cargo, was not truly destined to the port of Matamoras, a neutral port, and for purposes of trade and commerce, within the authority and intendment of public law, but, on the contrary, was destined for some other port or place, and in aid and for the use of the enemy, and in violation of the law of nations;

*Third.* That the ship's papers were simulated and false as to her real destination.

Wherefore, it is considered by the court, that the said vessel and her cargo are subject to condemnation and forfeiture, and it is ordered that a decree therefor be entered accordingly.\*

\*An appeal was taken to the Supreme Court from this decree, but it has not yet (April, 1866) been argued.

## THE BARK SALLY MAGEE AND CARGO.

Suppression, in the test oath to the claim, of the fact that the claimants were resident traders in the enemy's country, it averring that they were citizens of the United States.

The case of *The Hiawatha* (2 Black, 635) determines that the United States government is, in this war, clothed with all the rights conferred by international law upon separate nationalities in a state of public hostilities with each other; and that a vessel and the cargo on board of her, being the property of residents in an insurrectionary State of the United States, are enemy's property, and subject, in the federal courts, to condemnation, on capture at sea, as lawful prize.

A libel in a prize case need contain no further averment than that the property seized is prize of war.

In contemplation of law, the cargo in this case became the property of the consignees from the time of its being laden on board of the vessel and from the execution of the bills of lading therefor.

It is a settled principle of prize procedure that belligerent captors are discharged of liens or equities of neutral creditors resting upon the effects of an enemy seized at sea.

The acts of Congress of July 13, 1861, August 6, 1861, and March 3, 1863, (12 *U. S. Stat. at Large*, 255, 319, 762,) relate to confiscations for intraterritorial offences, and not to captures at sea.

(Before BETTS, J., decided July 30, 1863, but this opinion delivered subsequently.)

BETTS, J.: The above vessel and cargo were captured, as prize, at sea, off Cape Henry, June 26, 1861, by the United States ship-of-war Quaker City, and were sent to this port for adjudication. A libel was filed against the prize July 9 thereafter, in which were set forth, under special allegations, various causes of seizure, amounting to confiscable offences, according to public law. Three several claims were interposed thereto by the same proctor, July 23, 1861, in which, on the accompanying test oaths, it is attempted to raise particular issues of pleading in the suit.

1. Alexander Soule intervened, as master of the vessel, on behalf of David Currie, William Currie, George Allen, Isaac Davenport, jr., Robert Edmond, and James H. Blair, as owners of the vessel, her tackle, and furniture, averring that they were citizens of "the United States of America," and not disclosing the fact that they were resident traders in Richmond, Virginia, an insurrectionary State, then in open rebellion and war against the United States, although the master attached his test oath to the claim, asserting his knowledge of the ownership and citizenship of the claimants.

2. Charles M. Fry, Overton M. Price, and Chapman J. Leigh intervened on behalf of themselves and Dunlop, Moncure & Co., and claimed 473 bags of coffee marked X, and 1,450 bags marked D M, of the said cargo, on the allegation, in substance, that the consignment made on the voyage to Dunlop, Moncure & Co., the last-mentioned firm, was, on arrival of the said vessel as prize, liable to the claimants in the sum of \$35,326 and upwards, for acceptances and

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The Sally Magee.

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advances of money agreed to be made, and actually made, in good faith, and that the claimants were directed and authorized to receive the said coffee, and take charge of and sell the same, and apply the proceeds thereof, so far as needed, towards the payment of their own demands, and to hold the surplus for account of Dunlop, Moncure & Co. The test oath to this claim was made by Overton M. Price, one of the claimants.

3. The same claimants intervened and filed a further claim in the name of C. M. Fry & Co., to 1,529 bags of coffee marked E D, and 10 half barrels of tapioca, part of the cargo of the vessel, and alleged their right and title to the coffee and tapioca to have thus accrued—that the firm of Charles Coleman & Co., of Rio Janeiro, were directed, as factors and commission merchants, there residing, to purchase and ship the merchandise above specified, for the account and to the consignment of Edmond, Davenport & Co., but that, by its invoice, it appearing that the purchase was not made at or within the limits as to price, the said Davenport & Co. refused it as purchasers, or otherwise than on account of the shippers, Charles Coleman & Co., and Davenport & Co. authorized the claimants to receive the same in their place and behalf; and that the firm of Coleman & Co. is composed of subjects of the Queen of England, residents in Rio Janeiro, and that of Davenport & Co. of citizens of the United States. The test oath to this claim was made by Overton M. Price, one of the claimants, who swears to the residence and citizenship of the respective parties from his own knowledge, excepting that no other than his own firm reside within this district; and he adds, that he believes, from the correspondence of the parties, the other facts to be true. But he omits to state, what he must necessarily have ascertained from the correspondence, that the firm of Davenport & Co. were citizens and residents of Virginia, an insurrectionary State.

It appears from the ship's papers, the proofs taken *in preparatorio*, and the oath on the ship's registry, that the vessel was built at Baltimore, in 1857, and was registered in the port and district of Richmond, in Virginia, on the 5th of August, 1857, in the names of David Currie, William Currie, George W. Allen, Robert Edmond, Isaac Davenport, jr., and James H. Blair, all of Richmond, aforesaid, her only owners, and on the oath of one of the said owners.

It was admitted, on the hearing, by both parties, that the vessel was despatched from Richmond, on the outward voyage in question,



- January 2, 1861, laden with a cargo of American produce, shipped by Davenport & Co., of that place, (Dunlop, Moncure & Co., of the same place, being in part interested in the same shipment and in the bill of lading therefor,) consigned by Davenport & Co. to Charles Coleman & Co., of Rio Janeiro.

The vessel took in her return cargo at Rio, May 10, 1861, bound to Richmond. The cargo was consigned in part by Coleman & Co. to Dunlop, Moncure & Co., and the residue to Davenport & Co., at Richmond, or their assigns, he or they paying freight, and with no other condition or reservation annexed thereto. The transaction, accordingly, appears, upon the face of the ship's papers, to be a trading between two firms resident in Richmond, Virginia, and another in Rio Janeiro, by the consignment of domestic products by the Richmond houses to Coleman & Co., in Rio, and the transmission back by the latter of the proceeds thereof, in native products of the country of those consignees.

The vessel sailed on her outward voyage before the war commenced, and she returned and was captured off our coast without previous knowledge or notice of the state of war, or of the blockade of the port of Richmond, to which she was destined and sailing.

The defence in the pleadings was put in with a view to contest, on the merits, the cardinal questions then pending in litigation in relation to the validity and effect of the war measures of the government and the lawful authority of the judiciary under the existing state of rebellion, which matters have since been determined by the Supreme Court of the United States, in the case of *The Hiawatha* and other vessels, (2 Black, 635.) The judgment of the court in that case determines that the United States government is, in this war, clothed with all the rights conferred by international law upon separate nationalities in a state of public hostilities with each other. That case settles the further point presented in this, and adjudges that a ship and the cargo on board of her, being the property of residents in an insurrectionary State of the United States, are enemy's property, and subject, in the federal courts, to condemnation, on capture at sea, as lawful prize.

There is no just ground of exception to the sufficiency of the allegations in the libel. It is needlessly special and diffuse, and would have adequately complied with the rules of pleading in prize causes had it contained no further averment than that the seized property is prize of war. (*The Adeline*, 9 Cranch, 244; *The Fortuna*, 1 Dodson,

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81; Halleck's International Law, ch. 31, § 22.) No prejudice is, therefore, worked to the claimants, if the libellants fail to prove with exactness all the allegations spread out upon the libel, or if the manner of pleading the offence be faulty in point of form, since the averments set forth the seizure at sea of the vessel and cargo, as prize of war, by a public ship of the United States. (2 Wheat., App., 19.)

The vessel was, at the time of the capture, approaching the port of Richmond, free from all culpable intentions, inasmuch as she was without warning or knowledge of the existing blockade, and her condemnation is asked by the government solely upon the ground that both ship and cargo are enemy property. The claimants can secure no exemption for the prize by means of the character which they so reservedly and guardedly apply to themselves of "citizens of the United States." The actual owners of the property seized are domiciled traders in Virginia, and the Supreme Court, in their late decision above referred to, declare that citizens of the United States in rebellion and war against their country are enemies. The public are not yet in possession of the full judgment of the Supreme Court, exhibiting all the facts and doctrines it establishes in the various particular cases covered by that decision; but it is believed that the forthcoming publication of the official report of the cases comprised in the decision will show that it disposes of the main points involved in this case.

So far as the evidence before the court fixes the interest and posture of these claimants in respect to the cargo, they stand only as creditors of the consignees, Dunlop, Moncure & Co., having no lien on the property, even as against them, and no demand subsisting against the consignment to Davenport & Co., or their assigns, personally, or against the consignors of the cargo, Coleman & Co.

In contemplation of law, the cargo became the property of the consignees from the time of its being laden on board of the ship, and from the execution of the bills of lading therefor at Rio Janeiro, May 10, 1861. This is a settled doctrine of the American courts of law and admiralty, and, correlatively, of prize courts. (*Grove v. Brien*, 8 How., 429; *Fitzhugh v. Wiman*, (in error,) 9 New York, 5 Selden, 562; *Lawrence v. Minturn*, 17 How., 100, 107; *McKinlay v. Morish*, 21 How., 355; *The Merrimack*, 8 Cranch, 317.)

The intervention of the claimants rests upon a supposed right or equity in them to counteract the operation of that rule, and to rescue these consignments from its effect by the interposition of tacit priorities possessed by them. There is scarcely a principle more unques-

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tionably recognized in prize procedures than that belligerent captors are discharged of liens or equities of neutral creditors resting upon the effects of an enemy seized at sea. (Upton's Maritime Law 2d edition, and cases collected, 153, 158.)

Neither the ship's papers nor the proofs *in preparatorio* afford any evidence that the consignees did not acquire full title to this cargo. It is proved that the existence of the war was not known until the capture of the ship and cargo had been consummated; and the transaction suggested in the claim, that Davenport & Co. refused to accept the consignment made to them, and authorized the claimants to receive it, must necessarily have been a transaction subsequent to the actual seizure of the goods as prize, because the necessity and possible availability of such a procedure could not be known to the parties until the capture was actually perfected. It cannot be implied that a transaction of that character could divest the ownership vested by law in the consignees originally, or impair the validity of the prize capture. Such capture acquires a force and privilege of no less vigor than the arrest of the property on an execution against the consignees in favor of a judgment creditor. A voluntary shifting of the apparent ownership of property for the purpose indicated cannot be sustained except upon very satisfactory evidence of *bona fides* and justness in the operation. The allegations in the claims and test oaths must, therefore, be accepted as the legal construction of their rights adopted by the claimants, and not as the result of any evidence in the case proving a lawful change of interests in the cargo after the commencement of the voyage.

The acts of Congress (12 U. S. Stat. at Large, 255, 319, 762) cited by the claimants relate to confiscations for interterritorial offences, and not to captures at sea of prize of war, and contain no provisions applicable to this suit.

The cargo became, therefore, upon the facts, stamped with the character of the consignees and the ship from the inception of the voyage, and could not, by the subsequent interference of other parties in the adventure, be so varied from that condition as to avoid belligerent rights attached to it. (The Mary and Susan, 1 Wheat., 25.)

I am of opinion, accordingly, upon the whole case, that the facts and the law appertaining to it support the prosecution. (The Aurora, 4 ch. Rob., 218; The St. José Indiano, 1 Wheat., 208.) A decree of condemnation and forfeiture of the vessel and cargo is, therefore, ordered.

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The counsel for the claimants, in the written brief submitted by them, state: "If any doubt is entertained by the court as to the truth and good faith of the claimants' claim, further proof will set it at rest." The judgment of the court was publicly pronounced August 1, 1863. On the 10th of August thereafter the claimants filed their appeal from the judgment to the Supreme Court without previous application to this court for leave to give further proof in the suit.\*

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THE SCHOONER STEPHEN HART AND CARGO.

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In this case the cargo of the prize vessel, consisting wholly of articles contraband of war, was unladen and inventoried and appraised, and reported to the court, before the hearing.

Nearly all of the cargo was delivered to the government, for its use, at the appraised value.

The court, on the application of the libellants, permitted the cook of the vessel, one of the witnesses, to be re-examined on one of the standing interrogatories, it appearing from his affidavit that he did not fully answer that interrogatory in relation to certain papers on board, although he had testified to the omitted facts on an examination made of him on board of the capturing vessel.

The court, on the application of the libellants, permitted the first mate of the vessel, one of the witnesses, to be re-examined on the standing interrogatories, it appearing from his affidavit that he had the virtual control of the vessel on her voyage, and had, on his examination, not disclosed the truth as to the true destination of the vessel and cargo.

The question of the admissibility of depositions given on the re-examination of persons found on board of a captured vessel, is one resting in the sound discretion of the court.

If, in this suit, the case, upon the depositions as originally taken, without the re-examinations of the two witnesses, were a clear one in favor of the claimants, and free from all doubt, the court would hesitate, perhaps, to admit the re-examinations.

A prize case is, in the first instance, to be tried on evidence coming from the captured. If, upon such evidence, no doubt arises, the property is to be restored; and the privilege, on the part of the captors, of giving further proofs is, in such cases, rarely granted.

Within these principles the court has endeavored, in all proper cases, to exhaust the knowledge of the persons found on board of captured vessels.

The instructions of the Navy Department of the United States to the naval commanders of the United States of August 18, 1862, that a vessel is not to be seized "without a search carefully made, so far as to render it reasonable to believe that she is engaged in carrying contraband of war for or to the insurgents, and to their ports directly, or indirectly by transshipment, or otherwise violating the blockade," are in accordance with settled public law.

The views of the members of the government of Great Britain as to the administration of prize law by the courts of the United States during the present war, as to the belligerent right of search, as to violation of the blockade, and as to the carrying of articles contraband of war, stated.

The course of trade during the present war, in regard to running the blockade from neutral ports in the vicinity of the enemy's country, commented on.

The question whether or not property laden on board of a neutral vessel was being transported in the business of lawful commerce, is not to be decided by merely deciding the question as to whether the vessel was documented for and sailing upon a voyage between two neutral ports.

The commerce is in the destination and intended use of the property laden on board of the vessel, and not in the incidental, ancillary, and temporary voyage of the vessel, which may be but one of many carriers through which the property is to reach its true and original destination.

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\*An appeal was taken to the Supreme Court from this decree as to the cargo, but not as to the vessel, and the decree was affirmed March 12, 1866.

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The Stephen Hart.

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Nor is the unlawfulness of the transportation of contraband goods determined by deciding the question as to whether their immediate destination was to a port of the enemy.

The proper test to be applied is whether the contraband goods are intended for sale or consumption in the neutral market, or whether the direct and intended object of their transportation is to supply the enemy with them. To justify the capture it is enough that the immediate object of the voyage is to supply the enemy, and that the contraband property is certainly destined to his immediate use.

If a contraband cargo is really destined, when it leaves its neutral port of departure, for the use of the enemy in the country of the enemy, and not for sale or consumption in a neutral port, no principle of the law of nations, and no consideration of the rights and interests of lawful neutral commerce, can require that the mere touching at such neutral port, either for the purpose of making it a new point of departure for the vessel to a port of the enemy, or for the purpose of transshipping the contraband cargo into another vessel, which may carry it to the destination which was intended for it when it left its port of departure, should exempt the vessel or the contraband cargo from capture as prize of war.

The division of a continuous transportation of contraband goods into several intermediate transportations, by means of intermediate voyages by different vessels carrying such goods, cannot make a transportation which is, in fact, a unit, to become several transportations; although, to effect the entire transportation of the goods requires several voyages by different vessels, each of which may, in a certain sense and for certain purposes, be said to have its own voyage; and although each of such voyages, except the last one in the circuit, may be between neutral ports. Nor can such a transaction make any of the parts of the entire transportation of the contraband cargo a lawful transportation when the transportation would not have been lawful if it had not been thus divided.

The inception of the voyage completes the offence. From the moment that the vessel with the contraband articles on board quits her port on the hostile destination, she may be legally captured. It is not necessary to wait until the ship and goods are actually endeavoring to enter the enemy's port. The voyage being illegal at its commencement, the penalty immediately attaches and continues to the end of the voyage, at least so long as the illegality exists.

Where it is claimed that an enemy vessel has been transferred during the war to a neutral, competent proof of the transfer must be produced, or the vessel will be regarded as enemy property. The registry of the vessel in the name of the neutral claimant as owner is not enough. The bill of sale of the vessel must be proved, or the payment of the consideration for the transfer.

Where enemy property is transferred to a neutral residing at the time in the enemy's country, the property is still regarded as enemy property.

In this case it was held that the claimant of the vessel had given up the entire control of her movements to the owners of her cargo, and had involved her in any illegality of which they or her master had been guilty in respect to the cargo.

The letters of instruction found on board of the vessel, and the absence of any manifest, bills of lading, or invoices, commented on as affecting the question of the destination of her cargo.

The test oaths to the claims commented on as affecting the same question.

The vessel had on board a flag of the enemy, which was secretly thrown overboard after her capture.

Alleged ignorance of her master as to her having on board articles contraband of war.

Letters of instruction not delivered up by the master to the prize-master at the time of capture, but only produced by him on his examination on the standing interrogatories.

Attempted suppression, by the first officer of the vessel, of letters showing an intention to violate the blockade.

The spoliation of papers is a strong circumstance of suspicion. It is not, however, either in England or in the United States, held to furnish, of itself, sufficient ground for condemnation, but is a circumstance open to explanation. But if the explanation be not prompt and frank, or be weak or futile, if the cause labors under heavy suspicions, or if there be a vehement presumption of bad faith or gross prevarication, it is ground for the denial of further proof, and the condemnation ensues from defects in the evidence which the party is not permitted to supply.

*Held*, on the evidence, that the cargo of the vessel was intended, on its departure from England, to be carried into the enemy's country for the use of the enemy, by a violation of the blockade of some one of the enemy's ports, either in that vessel or in another vessel into which the cargo was to be transhipped, for the purpose of being transported by sea to the enemy's country.

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The Stephen Hart.

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*Held*, also, that the claimant of the vessel was, under the circumstances of this case, responsible for the use to which the master and the claimants of the cargo put the vessel, namely, the carrying, for a portion of the distance on its way to the enemy's country, of a cargo contraband of war, intended for the use of the enemy, and to enter the enemy's port by a violation of the blockade.

The carriage of contraband with a false destination works a condemnation of the vessel as well as the cargo.

Vessel and cargo condemned for an attempt to introduce contraband goods into the enemy's country by a breach of blockade.

(Before BETTS, J., decided July 30, 1863, but this opinion delivered subsequently.)

BETTS, J.: The schooner *Stephen Hart* was captured, as lawful prize of war, by the United States vessel-of-war *Supply*, on the 29th of January, 1862, in latitude 24° 12' north, and longitude 82° 14' west, off the southern coast of Florida, about 25 miles from Key West, and about 82 miles from Point de Yeacos in Cuba, and was sent to the port of New York for adjudication, under convoy of her captor. A libel was filed against her in this court on the 18th of February, 1862. On the 1st of May, 1862, a claim to the vessel was interposed by John Myer Harris, of Liverpool, England, as her sole owner. The test oath to that claim was made by Charles N. Dyett, the master of the schooner. On the same day, a claim was put in to the whole of the cargo of the schooner, by Samuel Isaac, on behalf of himself and Saul Isaac, as co-partners and subjects of Great Britain, doing business in England under the firm name of S. Isaac, Campbell & Co., and claiming to be the sole owners of the cargo. The test oath to that claim was made by Samuel Isaac. On the 25th of October, 1862, another claim to the schooner on behalf of Harris was interposed. In this second claim Harris is described as late of Liverpool, England, but now of Sherbro', on the western coast of Africa, at present residing in England, merchant. This second claim sets up that he is the sole owner of the schooner, and is a subject of the crown of Great Britain.

In the test oath to the second claim of Harris, and which test oath is made by him, it is alleged that, on the 28th of September, 1861, he agreed to become the purchaser of the schooner for £1,750, to be paid October 28, 1861; that it was afterwards arranged that the money should be paid on the 14th of October; that an abatement of £5 10s. 3d. was thereupon made from the purchase money; that the balance of £1,744 9s. 9d. was paid; that the vessel was at Bristol, England, at the time of her sale; that, after such purchase, she took a cargo from Bristol to London, and was then loaded partly at London and partly at Erith, with a cargo of arms, ammunition, and military cloth-

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The Stephen Hart.

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ing; and that such cargo was the sole property of S. Isaac, Campbell & Co. It is to be noted, that this test oath does not state from whom he purchased the schooner, or to whom he paid the money, or whether he received any bill of sale. It is also silent as to any hiring or charter of the vessel to S. Isaac, Campbell & Co. It states that the vessel "cleared for *the port of Cardenas*; that it was not intended that she should "enter, or attempt to enter, *any port of the United States*;" that "her true and only destination *with said cargo* was Cardenas, where *the same* was to be delivered;" that the vessel was thence to sail to the claimant in Africa, if she obtained a suitable cargo for that country; and that the vessel and her cargo are British property.

The test oath of Samuel Isaac to the claim on behalf of S. Isaac, Campbell & Co. to the whole of the cargo, alleges that the cargo was shipped by that firm, consisting of himself and Saul Isaac, on or about December 2, 1861, partly at London and partly at Erith; that the vessel was bound for Cardenas, in the island of Cuba; that the cargo consisted of arms, ammunition, and military clothing, and is wholly the property of that firm; that its members are British subjects; that the vessel cleared *for Cardenas*; that the cargo was destined for Cardenas; that it was not intended that the vessel should "enter, or attempt to enter, *any port of the United States*, or that the cargo should be delivered *at any port in the United States*;" and that "the true and only destination was Cardenas, where the same was to be delivered, and the vessel was thence to sail to Africa, if she obtained a suitable cargo for that country." It does not set up any charter of the vessel.

The testimony *in preparatorio*, consisting of the depositions of Charles N. Dyett, (the master,) Benjamin H. Chadwick, (the first mate,) John Leisk, (the cook and steward,) Charles Nellman, (the second mate,) and Robert Allan, (an able seaman,) was taken in February, 1862. The case was not submitted to the judgment of the court until the term of July, 1863. It was suggested at the hearing, in excuse of what seemed to be the great delay in the case, that such delay was owing to the pendency before the Supreme Court of the United States, on appeal, until March last, of various prize suits, which it was supposed might dispose of material questions involved in this case. But, from such report of the decisions in those cases as this court has been furnished with, it does not appear that the main questions involved in the present case have been determined by the Supreme Court in any of the cases alluded to.

Various interlocutory proceedings took place in the present case, a reference to some of which is necessary.

Before the filing of the libel, and on the 14th of February, 1862, this court ordered that so much of the cargo of the schooner as consisted of arms, powder; and munitions of war, should be placed in the custody of the commandant of the navy yard at New York, and that the prize commissioners should make a full inventory of all the articles delivered to the commandant, and that they should be appraised, and the appraisement be filed with the inventory. In pursuance of this order, the appraiser appointed by the court, Mr. Orison Blunt, discharged the cargo of the schooner, and stored it in the ordnance stores at the navy yard. In his report, which was filed on the 25th of March, 1862, he states that, in unloading the vessel, he did not have the benefit of any invoice; that he took an accurate account of every case, box, and bale, and of their numbers and marks; that the vessel was stowed with great care, and the bales and cases pressed in with jack-screws, which made great precaution necessary in taking them out, for fear of an explosion of some of the ammunition or loaded shell; that, upon opening the after hatch and taking out some of the cases, he discovered some four tons of powder, and also 1,008 loaded shell, with percussion primers affixed, and some 600,000 ball cartridges, or fixed ammunition for small-arms, which were all removed and placed in the magazines of the navy yard; that, after all the cargo had been placed in the ordnance stores without any loss or damage, he opened every entire case and bale, and inspected and counted accurately every article, and found them to be all in good condition, and that every article was of value for use in the army and navy of the United States, except a large quantity of "rebel buttons," manufactured in Great Britain, and stamped with a "rebel device." The appraiser annexed to his report a catalogue of the cargo and his appraisement of each article. The following articles appear to have constituted the cargo of the vessel: 5,740 long Enfield rifles, with triangular bayonets; 1,260 short Enfield rifles, with sabre bayonets; 660 rifled Enfield carbines, with sabre bayonets; 2,640 British rifled muskets, with triangular bayonets; 200 British smooth-bore muskets, with triangular bayonets; 320 Brunswick rifles, with sabre bayonets; 375 cavalry sabres; 6,800 gray blankets; 1,750 white blankets; 4 of Blakeley's 2 $\frac{3}{4}$ -inch bore rifled cannon, (six-pounders,) with 2,000 cartridge bags and 1,008 shell for the same, loaded and capped; 120,000 cartridges, fixed ammunition for Enfield rifles; 100,000 percussion caps; 2,160 cartridge boxes;



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If a contraband cargo is really destined, when it leaves its neutral port of departure, for the use of the enemy in the country of the enemy, and not for sale or consumption in a neutral port, no principle of the law of nations, and no consideration of the rights and interests of lawful neutral commerce, can require that the mere touching at such neutral port, either for the purpose of making it a new point of departure for the vessel to a port of the enemy, or for the purpose of transshipping the contraband cargo into another vessel, which may carry it to the destination which was intended for it when it left its port of departure, should exempt the vessel or the contraband cargo from capture as prize of war.

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In the test oath to the second claim of Harris, and which test oath is made by him, it is alleged that, on the 28th of September, 1861, he agreed to become the purchaser of the schooner for £1,750, to be paid October 28, 1861; that it was afterwards arranged that the money should be paid on the 14th of October; that an abatement of £5 10s. 3d. was thereupon made from the purchase money; that the balance of £1,744 9s. 9d. was paid; that the vessel was at Bristol, England, at the time of her sale; that, after such purchase, she took a cargo from Bristol to London, and was then loaded partly at London and partly at Erith, with a cargo of arms, ammunition, and military cloth-

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the owners of the cargo, in London, where, at the time, were William L. Yancey and other persons interested in the "southern insurrection;" that he, the witness, had been in no manner influenced to make such disclosure by the libellants or the captors, or any one in any manner connected with either of them, but had been induced to do so solely by the persuasions of his wife, who was a loyal woman then residing in Boston, and whose just reproaches had caused him to regret that he had ever lent his aid to such a cause, and to determine, as far as he could, to atone for whatever mischief he might have done. Upon the hearing of the motion for the further examination of Chadwick, the application was opposed by the claimants of the cargo, upon an affidavit made by Chadwick on the 6th of May, 1862, in which he stated that certain letters and papers belonging to him were seized by the captors, and retained by them until the 28th of April, 1862, when, without any application to the court, a portion of them were taken from the rest of the papers seized on board of the schooner, and handed over to him by Mr. Elliott, one of the prize commissioners; that the letters so handed to him were a part of the letters mentioned in the examination *in preparatorio* of John Leisk, and stated by Leisk to have been placed by him in a tea-pot at the request of Chadwick, and to have been afterwards discovered by the crew of the capturing vessel. The court was subsequently furnished with an affidavit made by Mr. Elliott, in which he stated that, after the arrival of the schooner at New York, one of the officers in charge of her placed in his hands some letters which he represented to be private papers belonging to Chadwick; that those letters were not presented by the prize-master as a part of the papers seized with the schooner as her papers, but as private letters belonging to Chadwick; that, under the advice of the assistant district attorney, and at the request and with the consent of Chadwick, the deponent carefully read the letters, and found them to be only private letters to Chadwick from his wife, and that there was not in them one word relating to the schooner, or her cargo, or her voyage, or her destination; and that thereupon, on the further advice of the assistant district attorney, the letters were handed to Chadwick as his private property, several months before his re-examination, and with no reference thereto, and with no knowledge or suspicion that any such re-examination would ever occur.

There were found on board of the schooner, at the time of her capture, her register and sundry bills, certificates, telegrams and letters, a

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clearance, two log-books, a copy of the United States Coast Survey for 1856, and sundry other papers, but no invoices, no bills of lading and no manifest.

The register of the schooner is dated at Liverpool, England, October 15, 1861. It represents her as having been built at Greenport, in the State of New York, in the United States, in the year 1859, and her foreign name as having been "Tamaulipas." Her tonnage is stated at 219.85 tons. Her owner is stated to be John Myer Harris, of Liverpool, merchant. The register contains the following printed memorandum at its foot: "Notice.—A certificate of registry granted under the Merchant Shipping Act, 1854, is not a document of title." On the back of the register is indorsed a certificate, made at the custom-house in London, on the 15th November, 1861, stating that Charles N. Dyett had that day been appointed master of the schooner.

There were also found on board of the schooner a letter, signed "R. H. Leonard, ship Alexander, Confederate States," dated at Bristol, England, October 29, 1861, and addressed to Chadwick; and a letter from Leonard, addressed "To Mr. B. H. Chadwick, alias Tommy, first officer Stephen Hart," purporting to be written at Bristol, England, but without date; and a letter, signed "John Johnson, ship Naomi, care J. P. Snell & Co., Bristol, England," and addressed "Mr. Benjamin H. Chadwick, schooner Stephen Hart, Surrey canal, London," and dated at Bristol, England, October 29, 1861. The contents of these three letters will hereafter be specially referred to.

By sundry certificates found on board of the schooner, it appears that she cleared from London, on the 19th of November, 1861, for Cuba generally, neither the port of Cardenas nor any other port in Cuba being mentioned as her destination, in any of her regular papers.

There was also found on board of the schooner a letter in the following words: "71 Jermyn street, London, S. W., November 19, 1861. J. Crawford, esq're, H. M. consul general, Havannah. Dear Sir: In confirmation of my last, permit me to ask your assistance and advice for Captain Dyett, of the schooner 'Stephen Hart,' should he need it during his stay at Havannah. Permit me to be yours, most faithfully, Saul Isaac."

There was also found on board of the schooner a telegram from S. Isaac, Campbell & Co., 71 Jermyn street, London, to Lloyd's agent at Deal, received at Deal November 23, 1861, in the following words: "Please detain schooner Stephen Hart, bound for Cardenas, for orders. We pay all expenses. Reply per telegraph. Letter per post." There

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was also found a letter, dated "London, Nov. 22, 1861," in the following words: "Captain Dyett, schooner Stephen Hart. Dear Sir: We require some matters arranged before the schooner leaves. You will receive this per Lloyd's agent. Attend to the orders, and wait until you hear from yours truly, S. Isaac, Campbell & Co." There was also found another telegram from S. Isaac, Jermyn street, London, to Lloyd's agent at Deal, received at Deal November 24, 1861, in the following words: "Captain Dyett will proceed on his voyage at once, and make up for lost time. Wish him a successful trip."

The shipping articles of the crew of the schooner, found on board, are dated November 16, 1861, and specify that the voyage is to be "from London to Cuba and Sierra Leone, and any port <sup>or</sup> ports on coast of Africa, <sup>and</sup> <sup>or</sup> North <sup>and</sup> <sup>or</sup> South America <sup>and</sup> <sup>or</sup> West Indies, and back to a final port of discharge in the United Kingdom. Voyage not to exceed twelve months." On these shipping articles the name of Benjamin H. Chadwick is entered as chief officer, his signature appearing upon them, and he is stated to be an American, aged 29 years, and to have last served on board the vessel called the Tamaulipas, and to have been discharged therefrom at London, on the 2d of November, 1861. The date of his joining the Stephen Hart is stated as November 1, 1861, although he is placed in a list under the head of "substitutes," with two others who are severally stated as joining the vessel November 22 and November 29, and no place is inserted as the place of his joining the vessel, although the place is inserted in the case of the other two substitutes. The wages of Chadwick are put down as £9 per calendar month, the wages of the mate, whose place he took, being stated at £6 per month. In one of the two log-books found on board of the vessel, namely, the official log-book, the name of Benjamin H. Chadwick appears as mate of the vessel, and no other person is named as mate; and the date of the commencement of the voyage is stated in that log-book as November 19, 1861. In the other log-book, which is an ordinary sea log-book, there appears, under date of November 21, 1861, an entry in the handwriting of Chadwick, by whom that log-book purports on its face to have been kept, to the effect that the mate had not come to perform his duty; and the log-book then proceeds as follows: "Wherefore I, Benj. H. Chadwick, have this day engaged with Capt. Charles N. Dyett to proceed on the voyage, having been engaged as ship-keeper on board since the 2d of the present month, the crew consisting of six seamen, cook and steward, captain, mate and boatswain—in all numbering ten persons." The shipping articles show eleven persons, there being

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seven seamen, one of the seamen, as appears by the official log-book, having been shipped at Gravesend on the 22d of November, and discharged because of illness, at Deal, on the 29th of November, and another seaman having been shipped at Deal in his place on the last-named day. The name of one seaman which appears on the shipping articles does not appear on the official log-book, and there is a memorandum on the shipping articles that he deserted. This reduces the number of persons composing the crew to ten, including Chadwick.

The entry on the title page of the sea log-book is, that the schooner was on a voyage from London to Cardenas, Cuba, commencing November 19, 1861, and that the log-book is kept by Benjamin H. Chadwick. It appears, from entries in that log-book, that the pilot took charge of the schooner "on a voyage to Cuba" on the 19th of November, and that she was on that day "towed by steam from the Grand Surrey dock to Erith, to take in the remainder of cargo," and that she arrived at Erith the same day; that on the 20th November she took in from lighters some sixty cases of cargo, and that on the evening of the same day she was towed to Gravesend; that she remained at Gravesend until the 22d of November, when she proceeded down the river, coming to anchor, in the afternoon, off the North Foreland light; that on the 23d of November she proceeded to the Downs, where she came to anchor, and where the "captain received instructions from parties in London" to wait until further orders; that on the 24th of November she received orders to proceed on her voyage; that she did not start until the 2d of December, her sea-log commencing at noon on the 3d of December; that she pursued her voyage through December and January, no particular occurrence being noted until the 15th of January, when she passed 18 miles to the northeast of Desirada island, one of the Leeward islands, in the West Indies, and also between the island of Gaudaloupe and the island of Montserrat, in the latitude of about  $1^{\circ} 30' N.$ ; that from this point she proceeded to the southward of Hayti and to the northward of the island of Jamaica, passing the latter on the 21st of January, and thence to the southward of the Grand Cayman island on the 23d of January, and thence around the western end of the island of Cuba, making Cape St. Antonio, the extreme western point of that island, at 3.30 p. m. on the 26th of January, and seeing the last of Cape Antonio light, 20 miles distant, bearing south half east, at 10 p. m. of that day, her latitude, by observation at noon on the 27th of

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January, being 23° 24' north. There are no entries in the log-book after the latter hour.

The "Coast Survey" found on board of the schooner, as before mentioned, is a report from Professor Bache, superintendent of the United States Coast Survey, for the year ending November 1, 1856, and contains, among other things, the following charts: A comparative chart of the entrance into Charleston harbor by Maffit's channel; a preliminary chart of the entrance into North Edisto river; a preliminary chart of the sea-coast of South Carolina, from Charleston to Tybee, Georgia, with sailing directions; a preliminary chart of St. Simon's bar and Brunswick harbor; a preliminary chart of St. Mary's bar and Fernandina harbor; a comparative chart of the same; two charts of St. John's river; and a preliminary chart of the Florida reefs. These charts, as folded in the book, have each of them written in pencil on the outside the nature of its contents, thus: "Maffit's channel;" "North Edisto;" "sailing directions for several So. Ca. and Ga. ports;" "St. Simon's;" "Fernandina;" "St. John's river;" "Florida reefs."

Captain Dyett, on his examination *in preparatorio*, produced two letters, which are annexed to his deposition. One of them is a letter of instructions to himself from S. Isaac, Campbell & Co., and is dated "71 Jermyn street, Military Warehouse, late 21 St. James street, London, S. W., November 19, 1861;" and the other is a letter from Saul Isaac to "Charles J. Helm, esq., care of J. Crawford, esq., Savannah," and is dated "71 Jermyn street, London, November 19, 1861." The contents of these two letters, and the circumstances under which they were produced by Captain Dyett, will be referred to hereafter.

Before proceeding to a consideration of the merits of the case, it is proper to advert to the objections made to the second examinations of the witnesses Leisk and Chadwick. The question of the admissibility of the second deposition of Chadwick was ordered by the court to stand over to be determined at the hearing of the main cause. The question of the admissibility of depositions given on the re-examination of persons found on board of a captured vessel is one resting in the sound discretion of the court, and no authority has been cited which decides that the practice is one that is not to be permitted under circumstances such as existed in the present case. The case of *The Pizarro* (2 Wheaton, 227) is not regarded as an authority against the course pursued in this case. While the court ought to guard the

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practice with care, lest it may be the means of introducing abuse and of leading to fraud and imposition, the present case seems, on the fullest consideration, to be one in which the propriety of admitting the re-examinations of the witnesses Leisk and Chadwick cannot be questioned. If the case, upon the depositions as originally taken, without the re-examinations of the two witnesses, were a clear one in favor of the claimants, and free from all doubt, the court would hesitate, perhaps, to admit the re-examinations. But, upon the testimony without the re-examinations, the case is not only not one free from doubt, but one clearly calling for the condemnation of both the schooner and her cargo; and the matters testified to by these witnesses upon their re-examinations are not only entirely consistent in themselves, but are corroborated by the other testimony in the case, and by the documents and papers found on board of the schooner. The cases which were cited by the counsel for the claimants upon the point of the admissibility of depositions taken on re-examination, (*The Haabet*, 6 Ch. Rob., 54; *The Ostsee*, Spinks, part 1, 189; *The Leucade*, Id., 227; *The Aline and Fanny*, Spinks, part 2, 327,) do not bear at all upon the question as to the admissibility of these re-examinations. They merely affirm the well-known principles of prize law, that affidavits of the captors are not to be admitted where, on the evidence of the persons on board of the captured vessel, there are no circumstances of suspicion in the case; that the case is, in the first instance, to be tried on evidence coming from the captured; that if, upon such evidence, no doubt arises, the property is to be restored; and that the privilege on the part of the captors of giving further proof is, in such cases, rarely granted. Within these principles, this court has endeavored, in all proper cases, to exhaust the knowledge of the persons found on board of captured vessels. Thus, in the case of *The Peterhoff*, pending in this court at the same time with the present case, the deposition of Captain Jarman, the master of the captured vessel, had been taken on the 1st of April, 1863, he having intervened, as claimant, for the interest of his principals, the owners of the *Peterhoff* and her cargo, and having made the test oath to such claim on the 21st of April, 1863. Some of the other witnesses having deposed to the spoliation of papers in the case, the court, upon an affidavit made by Captain Jarman, and upon the application of the claimants, and notwithstanding the objections of the counsel for the libellants and the captors, permitted Captain Jarman to be re-examined upon one of the standing interrogatories, and to add to his answer thereto the explanatory





statement contained in his affidavit. This explanation, and the matters deposed to by him on his further examination, were intended to relieve the owners of the *Peterhoff* and her cargo from the injurious effects of his concealment, on his first examination, of matters which ought to have been testified to by him in answer to the standing interrogatories, and of matters which were testified to by other witnesses. The court is entirely satisfied that it exercised its sound discretion in permitting the re-examination in the case of *The Peterhoff*, and the exercise of a like discretion calls for the admission in evidence of the depositions of Leisk and Chadwick, taken on re-examination in the present case. They are, accordingly, admitted in evidence.

Very important questions of public law have been discussed before the court in the present case, and in the kindred cases of *The Springbok* and *The Peterhoff*, all of which, with the case of the *Gertrude*, have been pending before the court at the same time. In the latter case, no claimant appeared for either the vessel or the cargo, she having been captured while on a voyage from Nassau, in endeavoring to run the blockade into a port of the enemy.

Many of the principal questions involved in the present case, and in the cases of the *Springbok* and *The Peterhoff*, are alike; and, as the conclusion at which the court has arrived in all of those cases is to condemn the vessels and their cargoes, I shall announce, in this case, the leading principles of public law which lead to a condemnation in all the cases.

On behalf of the libellants, it is urged in this case, 1st. That the *Stephen Hart* and her cargo were enemy's property when the voyage in question was undertaken, and when the capture was made; 2d. That the schooner was laden with articles contraband of war, destined for the aid and use of the enemy, and on transportation by sea to the enemy's country at the time of capture; 3d. That, with a full knowledge, on the part of the owner of the vessel and of the owners of her cargo, that the ports of the enemy were under blockade, the vessel and her cargo were despatched from a neutral port with an intention, on the part of the owners of each, that, in violation of the blockade, both the vessel and her cargo should enter a port of the enemy.

On the part of the claimants, it is maintained, 1st. That the transportation of all articles, including arms and munitions of war, between neutral ports in a neutral vessel, is lawful in time of war; 2d. That if a neutral vessel, with a cargo belonging to neutrals, be in fact on a voyage from one neutral port to another, she cannot be seized and con

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demned as lawful prize, although she be laden with contraband of war, unless it be determined that she was actually destined to a port of the enemy upon the voyage on which she was seized, or unless she is taken in the act of violating a blockade.

It is insisted, on the part of the claimants, that the Stephen Hart was, at the time of her capture, a neutral vessel, carrying a neutral cargo from London to Cardenas—both of them being neutral ports—in the regular course of trade and commerce. On the other side it is contended that the cargo was composed exclusively of articles contraband of war, destined, when they left London, to be delivered to the enemy, either directly, by being carried into a port of the enemy in the Stephen Hart, or by being trans-shipped at Cardenas to another vessel; that Cardenas was to be used merely as a port of call for the Stephen Hart, or as a port of trans-shipment for her cargo; that the vessel and her cargo are equally involved in the forbidden transaction; and that the papers of the vessel were simulated and fraudulent in respect to her destination and that of her cargo. A condemnation is not asked if the cargo was in fact neutral property, to be delivered at Cardenas for discharge and general consumption or sale there, but is only claimed if the cargo was really intended to be delivered to the enemy at some other place than Cardenas, after using that port as a port of call or of trans-shipment, so as to thus render the representations contained in the papers of the vessel false and fraudulent as to the real destination of the vessel and her cargo.

It would scarcely seem possible that there could be any serious debate as to the true principles of public law applicable to the solution of the questions thus presented; and, indeed, the law is so well settled as to make it only necessary to see whether the facts in this case bring the vessel and her cargo within the rules which have been laid down by the most eminent authorities in England and in this country.

The principles upon which the government of the United States, and the public vessels acting under its commission, have proceeded, during the present war, in arresting vessels and cargoes as lawful prize upon the high seas, are very succinctly embodied in the instructions issued by the Navy Department on the 18th of August, 1862, to the naval commanders of the United States, and which instructions are therein declared to be a recapitulation of those theretofore from time to time given. The substance of those instructions, so far as they are applicable to the present case, is, that a vessel is not to be seized "without a search carefully made, so far as to render it reasonable to believe

that she is engaged in carrying contraband of war for or to the insurgents, and to their ports directly, or indirectly by trans-shipment, or otherwise violating the blockade."

The main feature of these instructions, so far as they bear upon the questions involved in this case, is but an application of the doctrine in regard to captures laid down by the government of the United States at a very early day. In an ordinance of the Congress of the Confederation, which went into effect on the 1st of February, 1782, (5 Wheaton, Appendix, p. 120,) it was declared to be lawful to capture and to obtain condemnation of "all contraband goods, wares, and merchandises, to whatever nations belonging, although found in a neutral bottom, *if destined for the use of an enemy.*" •

The soundness of these principles, and the fact that the law of nations, as applicable to cases of prize, has been observed and applied by the government of the United States and its courts during the present war, was fully recognized by Earl Russell, her Britannic Majesty's principal secretary of state for foreign affairs, in his remarks made in the House of Lords on the 18th of May last. Earl Russell there stated that the judgments of the United States prize courts, which had been reported to her Majesty's government during the present war, did not evince any disregard of the established principles of international law; that the law officers of the Crown, after an attentive consideration of the decisions which had been laid before them, were of opinion that there was no rational ground of complaint as to the judgments of the American prize courts; and that the law of nations in regard to the search and seizure of neutral vessels had been fully and completely acknowledged by the government of the United States. On the same occasion Earl Russell remarked: "It has been a most profitable business to send swift vessels to break or run the blockade of the southern ports, and carry their cargoes into those ports. There is no municipal law in this or any country to punish such an act as an offence. I understand that every cargo which runs the blockade and enters Charleston is worth a million of dollars, and that the profit on these transactions is immense. It is well known that the trade has attracted a great deal of attention in this country from those who have a keen eye to such gains, and that vessels have been sent to Nassau in order to break the blockade at Charleston, Wilmington, and other places, and carry contraband of war into some of the ports of the southern States." He added: "I certainly am not prepared to declare,

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nor is there any ground for declaring, that the courts of the United States do not faithfully administer the law; that they will not allow evidence making against the captors; or that they are likely to give decisions founded, not upon the law, but upon their own passions and national partialities." He also said, that in a case of simulated destination—that is, a vessel pretending that she is going to Nassau, when she is in reality bound to a port of the enemy—the right of seizure exists.

The then solicitor general of England (Sir Roundell Palmer) stated, in the House of Commons, on the 29th of June last, referring to the cases of *The Dolphin* and *The Pearl*, decided by the district court for the southern district of Florida, (those vessels having been captured while ostensibly on voyages from Liverpool to Nassau, and it having been held by the court that the intention of the owners of the vessels was that they should only touch at Nassau, and then go on and break the blockade at Charleston,) that "if the owners imagined that the mere fact of the vessel touching at Nassau when on such an expedition exonerated her, they were very much mistaken;" that the principles of the judgment in the case of *The Dolphin* "were to be found in every volume of Lord Stowell's decisions;" that it was well known to everybody that there was a large contraband trade between England and America by way of Nassau; that it was absurd to pretend to shut their eyes to it; and that the trade with Nassau and Matamoras had become what it was in consequence of the war.

The Foreign Office of Great Britain, in a letter to the owner of the *Peterhoff*, on the 3d of April last, announced as its conclusion, after having communicated with the law officers of the Crown, that the government of the United States has no right to seize a British vessel *bona fide* bound from a British port to another neutral port, unless such vessel attempts to touch at, or has an intermediate or contingent destination to, some blockaded port or place, or is a carrier of contraband of war destined for the enemy of the United States; that her Majesty's government, however, cannot, without violating the rules of international law, claim for British vessels navigating between Great Britain and such neutral ports any general exemption from the belligerent right of visitation by the cruisers of the United States, or proceed upon any general assumption that such vessels may not so act as to render their capture lawful and justifiable; that nothing is more common than for those who contemplate a breach of blockade or the carriage of contraband, to disguise their purpose by a simulated desti-

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nation and by deceptive papers; and that it has already happened, in many cases, that British vessels have been seized while engaged in voyages apparently lawful, and have been afterwards proved in the prize courts to have been really guilty of endeavoring to break the blockade, or of carrying contraband to the enemy of the United States.

The cases of *The Stephen Hart*, *The Springbok*, *The Peterhoff*, and *The Gertrude* illustrate a course of trade which has sprung up during the present war, and of which this court will take judicial cognizance, as it appears from its own records and those of other courts of the United States as well as from public reputation. Those neutral ports have suddenly been raised from ports of comparatively insignificant trade to marts of the first magnitude. Nassau and Cardenas are in the vicinity of the blockaded ports of the enemy, while Matamoros is in Mexico, upon the right bank of the Rio Grande, directly opposite the town of Brownsville, in Texas. The course of trade, in respect to Nassau and Cardenas, has been generally to clear neutral vessels, almost always under the British flag, from English ports for those places, and, using them merely as ports either of call or of trans-shipment, to either resume new voyages from them in the same vessels, or to trans-ship their cargoes to fleet steamers, with which to run the blockade, the cargoes being composed, in almost all cases, more or less, of articles contraband of war. The character and course of this trade, and its sudden rise, are very properly commented upon in a despatch from the Secretary of State of the United States to Lord Lyons, of the 12th of May, 1863.

The broad issue upon the merits in this case is, whether the adventure of the *Stephen Hart* was the honest voyage of a neutral vessel from one neutral port to another neutral port, carrying neutral goods between those two ports only, or was a simulated voyage, the cargo being contraband of war, and being really destined for the use of the enemy, and to be introduced into the enemy's country by a breach of blockade by the *Stephen Hart*, or by trans-shipment from her to another vessel at Cardenas. It is conceded in the argument of the leading counsel for the claimants that if the property was owned by the enemy, and was fraudulently on its way to the enemy as neutral property, it was enemy's property, and was liable to capture, no matter whence it came or whither it was bound; and that, if the vessel were really intending and endeavoring to run the blockade, the property was liable to capture, no matter to whom it belonged or what was its character; but that if it was neutral property, in *lawful commerce*, it was safe from seizure.

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The question whether or not the property laden on board of the *Stephen Hart* was being transported in the business of lawful commerce, is not to be decided by merely deciding the question as to whether the vessel was documented for, and sailing upon, a voyage from London to Cardenas. The commerce is in the destination and intended use of the property laden on board of the vessel, and not in the incidental, ancillary, and temporary voyage of the vessel, which may be but one of many carriers through which the property is to reach its true and original destination. If this were not the rule of the prize law, a very wide door would be opened for fraud and evasion. A cargo of contraband goods, really intended for the enemy, might be carried to Cardenas in a neutral vessel sailing from England with papers which, upon their face, import merely a voyage of the vessel to Cardenas, while, in fact, her cargo, when it left England, was destined by its owners to be delivered to the enemy by being trans-shipped at Cardenas into a swifter vessel. And such, indeed, has been the course of proceeding in many cases during the present war.

Nor is the unlawfulness of the transportation of contraband goods determined by deciding the question as to whether their immediate destination was to a port of the enemy. Thus it is held that, in order to constitute the unlawfulness of the transportation of contraband goods, it is not necessary that the immediate destination of the vessel and cargo should be to an enemy's country or port; for, if the goods are contraband, and destined to the direct use of the enemy's army or navy, the transportation is illegal. If an enemy's fleet be lying, in time of war, in a neutral port, and a neutral vessel should carry contraband goods to that port, not intended for sale in the neutral market, but destined to the exclusive supply of the hostile forces, such conduct would be a direct interposition in the war, by furnishing essential aid in its prosecution, and would be a departure from the duties of neutrality. (Halleck on International Law, chapter 24, section 11, page 576.) The proper test to be applied is, whether the contraband goods are intended for sale or consumption in the neutral market, or whether the direct and intended object of their transportation is to supply the enemy with them. To justify the capture, it is enough that the immediate object of the voyage is to supply the enemy, and that the contraband property is certainly destined to his immediate use. While it is true that goods destined for the use of a neutral country can never be deemed contraband, whatever be their character, and however well adapted they may be to the purposes of war, yet, if they are destined for the direct use of the enemy's army or navy, they are not exempt

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from forfeiture on the mere ground that they are neutral property, and that the port of delivery is also neutral. (1 Duer on Insurance, 630; The Commercen, 1 Wheaton, 388, 389.)

If the contraband cargo of the Stephen Hart had been destined for the use of the fleet of the enemy lying in the harbor of Cardenas, there could be no doubt that it might lawfully have been captured as prize of war on its way to Cardenas. And, if the contraband cargo was really destined, when it left its port of departure in England, for the use of the enemy in the country of the enemy, and not for sale or consumption in the neutral port, no principle of the law of nations, and no consideration of the rights and interests of lawful neutral commerce, can require that the mere touching at the neutral port, either for the purpose of making it a new point of departure for the vessel to a port of the enemy, or for the purpose of trans-shipping the contraband cargo into another vessel, which may carry it to the destination which was intended for it when it left its port of departure, should exempt the vessel or the contraband cargo from capture as prize of war. If it was the intention of the owner of the Stephen Hart, or of the owners of her cargo, having control of the movements of the vessel, that she should simply touch at Cardenas, and should proceed thence to Charleston, or some other port of the enemy, her voyage was not a voyage prosecuted by a neutral vessel from one neutral port to another neutral port, but a voyage which was, at the time of her seizure, in course of prosecution to a port of the enemy, although she had not as yet reached Cardenas, and although her regular papers documented her for a voyage from London to Cuba. Such a voyage was one begun and carried on in violation of the belligerent rights of the United States to blockade the ports of the enemy, and to prevent the introduction into those ports of arms and munitions of war. The division of a continuous transportation of contraband goods into several intermediate transportations, by means of intermediate voyages by different vessels carrying such goods, cannot make a transportation which is, in fact, a unit, to become several transportations, although, to effect the entire transportation of the goods requires several voyages by different vessels, each of which may, in a certain sense and for certain purposes, be said to have its own voyage, and although each of such voyages, except the last one in the circuit, may be between neutral ports. Nor can such a transaction make any of the parts of the entire transportation of the contraband cargo a lawful transportation, when the transportation would not have been lawful if it had not been thus divided.

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The law seeks out the truth, and never, in any of its branches, tolerates any such fiction as that under which it is sought to shield the vessel and her cargo in the present case. If the guilty intention, that the contraband goods should reach a port of the enemy, existed when such goods left their English port, that guilty intention cannot be obliterated by the innocent intention of stopping at a neutral port on the way. If there be, in stopping at such port, no intention of transshipping the cargo, and if it is to proceed to the enemy's country in the same vessel in which it came from England, of course there can be no purpose of lawful neutral commerce at the neutral port by the sale or use of the cargo in the market there; and the sole purpose of stopping at the neutral port must merely be to have upon the papers of the vessel an ostensible neutral terminus for the voyage. If, on the other hand, the object of stopping at the neutral port be to transship the cargo to another vessel to be transported to a port of the enemy, while the vessel in which it was brought from England does not proceed to the port of the enemy, there is equally an absence of all lawful neutral commerce at the neutral port; and the only commerce carried on in the case is that of the transportation of the contraband cargo from the English port to the port of the enemy, as was intended when it left the English port. This court holds that, in all such cases, the transportation or voyage of the contraband goods is to be considered as a unit, from the port of lading to the port of delivery in the enemy's country; that if any part of such voyage or transportation be unlawful, it is unlawful throughout; and that the vessel and her cargo are subject to capture, as well before arriving at the first neutral port at which she touches after her departure from England, as on the voyage or transportation by sea from such neutral port to the port of the enemy.

These principles were laid down and applied by the district court for the southern district of Florida in the cases of *The Dolphin* and *The Pearl*, and the views of that court are fully adopted by this court, and are to be regarded as a part of the settled law governing prize tribunals. It is laid down in Halleck on International Law, (chapter 21, section 11, page 504,) that the ulterior destination of the goods determines the character of the trade, no matter how circuitous the route by which they are to reach that destination; that even where the ship in which the goods are embarked is destined to a neutral port, and the goods are there to be unladen, yet if they are to be transported thence, whatever may be the mode of conveyance, to an enemy's port or territory, they fall within the interdiction and penalty of the law;



that the trade from an enemy's country through a neutral port is likewise unlawful, and that the goods so shipped through a neutral territory, even though they may be unladen and trans-shipped, are liable to condemnation; that it is an attempt to carry on trade with the enemy by the circuitous route of a neutral port, and thus evade the penalty of the law; that the law will not countenance any such attempt to violate its principles by a resort to the shelter of neutral territory; that any such voyage is illegal at its inception; and that the goods shipped are liable to seizure at the instant it commences. The same doctrines are asserted in 1 Kent's Commentaries, (page 85, note a, 8th edition,) in 1 Duer on Insurance, (page 568, section 13,) and in *Jecker v. Montgomery*, (18 Howard, 110, 115.)

The same principles are maintained by the English authorities. In Wildman's International Law, (vol. 2, page 20,) it is asserted that no exemption from the consequences of sending goods to the enemy will be gained by sending them through a neutral country; that the interposition of a prior port makes no difference; that all trade with the enemy is illegal; that the circumstance that the goods are to go first to a neutral port will not make the trade lawful; and that it is not competent, during a war, for a British subject to send goods to a neutral port, with a view of sending them forward, on his own account, to an enemy's port, consigned by him to persons there, as in the ordinary course of commerce. These principles were laid down by Sir William Scott, in *The Jonge Pieter*, (4 Ch. Rob., 79.) The particular doctrine thus asserted had reference to the trading of British subjects with the enemy of Great Britain. But the reason of the doctrine makes it equally applicable to the case of a neutral attempting to send contraband goods to an enemy of the United States through the interposition of a prior neutral port.

In the case of *The Richmond*, (5 Ch. Rob., 325,) an American vessel was seized in the port of St. Helena, and proceeded against as a prize, on the ground that she was going, under a false destination, to the Isle of France, an enemy's port, with contraband articles concealed on board, and with a view of selling the vessel there, as a vessel well adapted for a ship-of-war, and for the service of privateering. Sir William Scott, in his judgment in the case, says: "It is difficult not to consider the Isle of France as the possible port of destination of this vessel, according to the original intention—I say, as the possible port, at least, if not the principal and absolute port of destination of the original voyage. It cannot be denied, undoubtedly,

that an American ship might go to St. Helena, and from thence to the Isle of France, or any other port of the enemy, provided the cargo was of an innocent nature. If, on the contrary, the cargo was of a noxious character, the circumstance of merely touching at an English port would not alter the nature of a voyage in itself illegal." He then comes to the conclusion, that the vessel had on board articles contraband of war—pitch and tar—and holds that there are strong grounds to presume that the original destination of those articles was absolutely to the Isle of France. "But," he adds, "supposing that it was only of a shifting nature, and that it was merely eventual; that, in law, would be quite sufficient, and that, at least, must be taken to have been the design of the parties." "If the intention was no more than this—'I will go and sell pitch and tar at St. Helena, if I can; and, if I cannot, I will go with them to the Isle of France, and sell them there'—that is an unlawful purpose, and every step taken in the prosecution of such a design is an unlawful act. The interposition of an English port would not make it innocent." "The pitch and tar were going with an original destination, either positive or eventual, to the Isle of France."

In the case of *The Maria*, (5 Ch. Rob., 365,) Sir William Scott says: "It is an inherent and settled principle, that the mere touching at any port, without importing the cargo into the common stock of the country, will not alter the nature of the voyage, which continues the same in all respects, and must be considered as a voyage to the country to which the vessel is actually going for the purpose of delivering her cargo at the ultimate port." The doctrine here laid down is equally applicable to the cargo where it is carried to the ultimate port in a different vessel from the one in which it is carried to the intermediate port.

In the case of *The William*, (5 Ch. Rob., 385,) on appeal before the lords commissioners of appeal in prize cases, Sir William Grant, in delivering the judgment of the court, says: "Neither will it be contended, that the point from which the commencement of a voyage is to be reckoned changes as often as the ship stops in the course of it; nor will it the more change because a party may choose arbitrarily, by the ship's papers or otherwise, to give the name of a distinct voyage to each stage of a ship's progress. The act of shifting the cargo from the ship to the shore, and from the shore back again into the ship, does not necessarily amount to the termination of one voyage and the commencement of another. It may be wholly unconnected

with any purpose of importation into the place where it is done. Supposing the landing to be merely for the purpose of airing or drying the goods, or of repairing the ship; would any man think of describing the voyage as beginning at the place where it happened to become necessary to go through such a process? Again, let it be supposed that the party has a motive for desiring to make the voyage appear to begin at some other place than that of the original lading, and that he therefore lands the cargo purely and solely for the purpose of enabling himself to affirm that it was at such other place that the goods were taken on board; would this contrivance at all alter the truth of the fact? Would not the real voyage still be from the place of the original shipment, notwithstanding the attempt to give it the appearance of having begun from a different place? The truth may not always be discernible; but, when it is discovered, it is according to the truth, and not according to the fiction, that we are to give to the transaction its character and denomination. If the voyage from the place of lading be not really ended, it matters not by what acts the party may have evinced his desire of making it appear to have been ended. That those acts have been attended with trouble and expense, cannot alter their quality or their effect. The trouble and expense may weigh as circumstances of evidence to show the purpose for which the acts were done; but, if the evasive purpose be admitted or proved, we can never be bound to accept, as a substitute for the observance of the law, the means, however operose, which have been employed to cover a breach of it. Between the actual importation by which a voyage is really ended, and the colorable importation which is to give it the appearance of being ended, there must necessarily be a great resemblance."

The cases of *The Nancy*, (3 Ch. Rob., 122,) and *The United States*, (Stewart's Adm. Rep., 116,) were cases in which a voyage, consisting of different parts, was held to be not two voyages, but one entire transaction, formed upon one original plan, conducted by the same persons, and under one set of instructions; and it was held that, in cases of contraband, especially when there is anything of fraud or concealment, a return voyage is to be deemed connected with an outward voyage.

It is equally well settled, that the inception of the voyage completes the offence; that, from the moment that the vessel, with the contraband articles on board, quits her port on the hostile destination, she may be legally captured; that it is not necessary to wait until the

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ship and goods are actually endeavoring to enter the enemy's port; and that, the voyage being illegal at its commencement, the penalty immediately attaches, and continues to the end of the voyage, at least so long as the illegality exists. (Halleck on International Law, chapter 24, section 7, page 573; Wildman's International Law, vol. 2, page 218; 1 Duer on Insurance, 626, section 7.) The same doctrine is laid down by Sir William Scott, in *The Imina*, (3 Ch. Rob., 167,) and in *The Trende Sostre*, (6 Ch. Rob., 390, note.) In *The Columbia*, (1 Ch. Rob., 154,) Sir William Scott says that the sailing, with an intention of evading a blockade, is beginning to execute that intention, and is an overt act constituting the offence, and that from that moment the blockade is fraudulently invaded. The same view is maintained by him in *The Neptunus*, (2 Ch. Rob., 110.)

Such being the well-settled principles of public law in reference to the carriage of contraband goods to the enemy, it only remains to be seen whether the *Stephen Hart* and her cargo are liable to condemnation according to those principles. If she was, in fact, a neutral vessel, and if her cargo, although contraband of war, was being carried from an English port to Cardenas, for the general purpose of trade and commerce at Cardenas, and for use or sale at Cardenas, without any actual destination of the cargo, prior to the time of the capture, to the use and aid of the enemy, then most certainly both the vessel and her cargo were free from liability to capture.

The *Stephen Hart* was laden with a cargo composed exclusively of arms, munitions of war, and military equipments. It is urged, on the part of the claimants, that the vessel was a neutral carrier of the products of her own country, and of the property of neutral merchants, from one neutral port to another. A strong appeal has been made to the court not to permit the United States, as a belligerent, to stop the manufactures and commerce of all other nations, or to dictate the mode in which their trade shall be carried on. It is said that a peaceful neutral may quicken his industry and his commerce, and multiply his gains, by the high prices caused by the demands of those belligerents who have exchanged the character of producers for that of consumers and destroyers; that British merchants may lawfully seek to supply the quickened demand at the new price, or become the carriers for those whose ships are exposed to capture; that if, for any reason, they may not sell to the enemy of the United States directly, then they may sell to others who may sell to him; that if they are unwilling to run the blockade, they may sell to those who are willing to

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take the risk; that if they may not sell to Charleston, they may sell to Cardenas, without troubling themselves with the question, whether Cardenas will sell freely to those who may come from Charleston to buy; and that the national wealth of the United States has been largely increased, during the warfare of other nations, by the employment of its citizens as neutral carriers in just such lawful commerce. But a neutral merchant ought not to forget, that the duties which the law of nations imposes on him flow from the same principle which ought to control the action of his government as a neutral government; that, where he supplies to the enemy of a belligerent munitions or other articles contraband of war, or relieves, with provisions or otherwise, a blockaded port, he makes himself personally a party to a war, in which, as a neutral, he has no right to engage; that, under such circumstances, his property is justly treated as the property of an enemy; and that the observance of those rules which the law of nations prescribes for his conduct is a high moral duty. (1 Duer on Insurance, 754, 755, section 24.)

It is contended, on the part of the libellants, that the voyage of the Stephen Hart was originated and prosecuted with the illicit purpose of conveying to the enemy articles contraband of war, and of violating the blockade of a port of the enemy. It will conduce to a better understanding of the case to trace the previous history of the vessel, so far as we learn it from the evidence. She was built in the United States, and had been previously called the Tamaulipas. At the time the war broke out she was owned in New Orleans, which place she left in June, 1861, while that port was under blockade, although she was allowed to proceed on her voyage after her papers had been examined by a blockading vessel. Before she left New Orleans, and while that port was a port of the enemy, and was under blockade, she was sold there, about May, 1861, to an English owner residing there. Chadwick testifies to this. He also says that he understood that this English owner, a person named Allen, gave a power of attorney to Captain Ackley, the then master of the vessel, who was in the employ of Allen, and who took the vessel to Cuba, and thence to England, authorizing him to sell her; and that she was sold in England to the claimant, Harris. All this appears upon the first examination of Chadwick. But no bill of sale of the vessel is produced either to Allen or to Harris; and there is no mention anywhere of the existence of any, not even in the test oath of Harris. Nor is there any proof of the payment of any consideration on either sale, other than hearsay

evidence and the test oath of Harris. All the knowledge that Chadwick has on the subject of the sale to Harris is, that Captain Ackley, the former master of the vessel, told him that he had sold the vessel to Harris for £2,000, and had got his money, or the drafts for it. Captain Dyett says that the only way he knows that Harris is the owner is by seeing his name in the register as owner. Neither Captain Dyett nor Chadwick know anything about any bill of sale of the vessel. Although, in the certificate of registry, which is dated at Liverpool, October 15, 1861, Harris is named as the owner, yet it is expressly stated in the certificate that that paper is not a document of title. Captain Dyett says that he was appointed to the command of the vessel on the 15th of November, 1861, he thinks, which was four days before she was cleared at the custom-house in London; that he was appointed to such command by Messrs. Isaac, Campbell & Co., of London; and that Mr. Saul Isaac, of that firm, delivered the vessel to him. No charter-party, chartering the vessel to the owners of the cargo, was found on board. Captain Dyett says that there was no charter-party for the voyage, and Chadwick says that he does not know of any charter-party. The only evidence of any payment by Harris for the vessel is his test oath to his claim. But in that test oath he does not state to whom he paid the purchase-money, nor does he state that any bill of sale of the vessel was delivered to him, nor is the power of attorney from Allen, under which the sale is alleged to have been made by Captain Ackley, produced, or its absence accounted for.

In the case of *The Christine*, (1 Spinks, 82,) during the recent war between England and Russia, where a vessel was claimed by one Schwartz, her master, as a citizen of Lubeck, and a neutral owner, he alleged that he had purchased her, just before the commencement of the war, from her Russian owners. Dr. Lushington says, in delivering the judgment of the court, after noting the fact that the master had been master of the vessel, under Russian colors, for eight months before the time of the alleged purchase: "This contract is a very suspicious one, not only on the ground that it was immediately antecedent to the war, but also on the ground that it was a purchase by the master." "A party coming forward under such circumstances, and claiming the ship in a neutral character, is bound not only to produce, but to have on board, sufficient documents to satisfy the court that he possesses a *bona fide* title. I do not say that the court would bind him down to the production, in the first instance, of all the papers which it might

ultimately deem necessary to induce it to pronounce for a restitution; but I do say, that it ought to be a contract of that nature in itself, supported by such documents found on board as would give the court good reason to suppose that, if the opportunity of producing further proof were allowed, it would give him a title to restitution; otherwise further proof is a mockery." "There must be proof of payment in all cases where any suspicion arises as to the validity of the contract at the time of sale. It is quite vain to say, 'Mine is a *bona fide* valid contract.' The money must have been paid before the master assumes the command, or ventures out on the high seas during war; otherwise the ship would be liable to be condemned." "The title on which the master claims—the bill of sale—is not here. Now, this may be a *bona fide* claim. I do not decide whether it is or not; but I decide that it is not legal, according to the usage and practice of the court, and the laws which regulate the court in matters of prize. If this important paper, which is the sole title-deed, is not produced, what satisfaction can the court have? The title-deed to the ship should be on board of the ship. If further proof were allowed in this particular case, could the court feel satisfied that it would receive a genuine document? The case is teeming with suspicion throughout. Is there any one document whatever produced that can satisfy the court that the transaction was *bona fide*, independently of all the circumstances I have mentioned? Certainly there is one document." That document was a certificate, showing that a ship's clearer appeared at Lubeck, and swore that he was lawfully authorized by the claimant, by power of attorney, and that the vessel commanded by the claimant solely and *bona fide* belonged to him. Dr. Lushington proceeds: "So that this gentleman makes oath, by virtue of a power of attorney from Captain Schwartz, which power of attorney is not produced. I have simply this document, which in no degree corroborates the claim." He then adds that, in a case where the question in dispute is the *bona fides* of the sale, it has always been held that proof of actual payment was essential, and decides that he cannot allow further proof in the case, and that the vessel must be condemned.

In the case of *The Sisters*, (5 Ch. Rob., 155,) Sir William Scott says: "A bill of sale is the proper title to which the maritime courts of all countries would look. It is the universal instrument of transfer of ships, in the usage of all maritime countries, and in no degree a peculiar title-deed or conveyance, known only to the law of England.

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It is what the maritime law expects, and what the court of admiralty would, in its ordinary practice, always require."

As the *Stephen Hart* was built in the United States, she must, on the evidence, be held to have belonged, at the commencement of the war, to a citizen of New Orleans, and her transfer, after the blockade was established, to a British subject, a resident of New Orleans, not being in any manner proved by competent evidence, she was still, in judgment of law, enemy's property, and liable to capture as such. But, in addition to this, even if it were shown that she had, in fact, been legally transferred to Allen, a British subject, residing in New Orleans, yet, as the domicile of Allen was in the country of the enemy at the time of the transfer, his *status* follows the character of that country in war, and the law of nations pronounces him an enemy. (*The Pizarro*, 2 Wheaton, 227; *The Prize Cases*, 2 Black, 635, 674.) Moreover, the transfer by Allen to Harris, even if that were sufficiently proved, having been made under a power of attorney, must, in judgment of law, be regarded as having been made at New Orleans by Allen, a resident of New Orleans, and as of the time when the power of attorney was given, and thus as having been made in a blockaded port of the enemy, in time of war, by a British resident there, and as leaving the vessel equally liable to capture as enemy property. (*The General Hamilton*, 6 Ch. Rob., 61; *The Two Brothers*, 1 Ch. Rob., 131.)

There is, therefore, abundant ground for condemning the vessel, irrespective of any of the reasons connected with the traffic in which she was engaged at the time of her capture; and the like conclusions follow in respect to the cargo.

The cargo of the vessel, composed of arms, munitions of war, and military equipments, is claimed as the sole property of S. Isaac, Campbell & Co., of London, who appear to be dealers in military goods. It is alleged by the claimants of the vessel and cargo that the real destination of the vessel and cargo was Cardenas, in the island of Cuba. But it is to be noted that the shipping articles specify the voyage as a voyage from London to *Cuba*, (Cuba generally, not Cardenas or any other port in Cuba,) and Sierra Leone, "and any port <sup>and</sup><sub>or</sub> ports on coast of Africa, <sup>nd</sup><sub>or</sub> North <sup>and</sup><sub>or</sub> South America <sup>and</sup><sub>or</sub> West Indies, and back to a final port of discharge in the United Kingdom." All the other official papers found on board of the vessel, such as the receipt for the Dover harbor duties, the certificate of the shipping-master for the clearance, the receipt for light duties at London, the



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receipt for harbor duties at Ramsgate, the certificate from the searcher's office of the London custom-house, and the victualling bill, speak of the voyage as one from London to *Cuba*. The telegram of the 23d of November, 1861, from S. Isaac, Campbell & Co., to Lloyd's agent at Deal, speaks of the schooner as bound for Cardenas. The title-page of the ordinary log-book speaks of the voyage as one from London to Cardenas, Cuba. The label on the outside of that log-book has the blank for the place at which the voyage commenced filled up with the words, "London, England," but the blank for the place of destination is not filled up at all. The blanks at the tops of the pages are filled up on only one page, although sixty-two pages are occupied with entries of the progress of the voyage, from the 19th of November, 1861, to and including noon of the 27th of January, 1862. The page referred to has, at the top, the voyage entered as "from London towards *Cuba*." On the first page, under date of November 19, 1861, there is an entry that the pilot "took charge of the schooner Stephen Hart on a voyage to *Cuba*." The title-page of the official log-book speaks of the voyage as being one to "*Cuba* and Sierra Leone." None of the letters found on board are addressed to any person at Cardenas. But there was found on board a letter from Saul Isaac to Mr. Crawford, the British consul general at Havana, asking his "assistance and advice for Captain Dyett, of the schooner Stephen Hart, should he need it during his stay at Havannah."

The letter of instructions to Captain Dyett from S. Isaac, Campbell & Co., produced by Captain Dyett on his examination, directs him to proceed "to Cardenas, Cuba," and to report, on his arrival there, "to Charles J. Helm, esq're, to whom you will consign yourself and vessel, and from whom you will receive all orders for your future actions with reference to the schooner and cargo, and you will be pleased to implicitly obey all orders given by Charles J. Helm, esq're. \* \* \* \* \* Mr. Helm may require the schooner for use at Havannah. Should he do so, you will at once make the best arrangements for the immediate return to England of yourself and crew. Should, however, any one wish to remain in the employ of Mr. Helm, we have no objection to his doing so. In case Mr. Helm has no use for the vessel after discharging the cargo, you will receive full instructions from Messrs. Isaac, Campbell & Co., by mail leaving this on the 2d proximo, for proceeding to the west coast of Africa." The letter then directs Captain Dyett to deliver, without delay, on his arrival, the letters which he has for Mr. Helm and Mr. Crawford, and also, imme-

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diately on his arrival at Cardenas, to telegraph "to Cahuzac Brothers, Havannah, who will, on receipt of message, communicate with you." The letter to Mr. Helm, thus referred to, was also produced by Captain Dyett on his examination, and is from Saul Isaac, and is addressed "Charles J. Helm, esq're, care of J. Crawford, esq're, Havannah." It says: "The bearer of this is Captain Dyett, of the schooner Stephen Hart, for whom I ask the favor of your good offices. Should he require assistance or advice during his stay at Havannah, he will hand you his instructions from my house to read, and I feel assured that you will in all matters find him a good man."

It is very manifest, from these documents, that Mr. Helm, Mr. Crawford, and Cahuzac Brothers, the only parties named as having any concern in Cuba with the vessel or her cargo, were all of them to be found at Havana, and none of them at Cardenas, and that no person in Cardenas was consignee either of the vessel or the cargo; that it was contemplated that the vessel should go to Havana, if Mr Helm required it, and be given up for use to Mr. Helm, at Havana, if he required it; that Captain Dyett was to obey the orders of Helm in all his actions with reference to the vessel and her cargo; that Captain Dyett and his crew were authorized to remain in the employ of Mr. Helm, if any of them desired to do so; and that Mr. Helm was to have the control of the discharging of the cargo of the vessel, and the right to use the vessel after the cargo was discharged. It is also to be noted, that these instructions to Captain Dyett were not from Harris, the alleged owner of the vessel, but were from S. Isaac, Campbell & Co., who claim to be the owners of the whole of her cargo. No instructions whatever from Harris to Captain Dyett were found on board, nor is it pretended that he had any from Harris. Harris appears to have given up the entire control of the vessel and of her movements to S. Isaac, Campbell & Co.; and, for these reasons, independently of all other considerations, the owner of the vessel must be held to have involved her in any illegality of which S. Isaac, Campbell & Co. or Captain Dyett have been guilty in respect to the cargo of the vessel, especially in view of the facts which Captain Dyett states, that he was put in command of the vessel by that firm, and that there was no charter-party for the voyage. (*Jecker v. Montgomery*, 18 Howard, 110, 119.)

The conclusion is irresistible, from the contents of the three letters referred to, that there was no intention whatever of discharging the

cargo of the vessel at Cardenas; and that, if discharged at all in Cuba, it was to be discharged at Havana. As no manifest, bills of lading, or invoices, or any other papers, (except the letter of instructions to Captain Dyett,) giving any information as to the character of the cargo, or its owners, or its consignees, were found on board of the vessel, the conviction is forced on the mind that the cargo had a single ownership and a single destination; that that ownership was one represented by Mr. Helm as its agent; and that that destination was to the place where his principals resided, and where they would derive the most benefit from the cargo.

Who was Charles J. Helm? Captain Dyett speaks of him as "Major Helm," and says that he resides in Havana. Chadwick, on his second examination, says that Helm was the agent for the "Confederate States," in Cuba. This being so, it may very well be inferred that this cargo of arms and munitions of war was destined to be carried into the enemy's country, as we find the vessel and her cargo placed, by the orders of S. Isaac, Campbell & Co., within the entire control, and subject to the orders of Helm. But, independently of this, the evidence is irresistible, that the cargo was destined for the enemy's country.

The test oaths, both of Harris and of Samuel Isaac, when examined carefully, fall far short of a frank and clear statement of an innocent destination for the vessel and cargo. The test oath of Harris says that the true and only destination of the vessel, *with the cargo*, was Cardenas, "where the same was to be delivered." This oath would be satisfied by a delivery of the cargo in bulk at Cardenas to Helm, and its transshipment there to another vessel, to be carried to a port of the enemy, in pursuance of such an original destination. It does not state that the destination of the cargo was not to a port of the enemy. And it states, in very suspicious language, that it was not intended that the vessel should enter, or attempt to enter, *any port of the United States*, but it does not state that it was not intended that the vessel or her cargo should enter, or attempt to enter, any port of the enemy of the United States, or any port blockaded by the naval forces of the United States. In all these particulars the test oath of Samuel Isaac to the claim for the cargo holds the same suspicious language, and is wanting in the same averments. The court searches in vain through these test oaths to find those full and honest allegations which should characterize the test oath to a claim made by a neutral really engaged in lawful and innocent commerce.

I shall now review the evidence in the case, in order to see to what conclusion it leads. Captain Dyett says that he does not remember seeing any "southern flag" on board of his vessel, although he says that if the "southern flag" were put before him he should not know it. He admits, however, that, besides the English colors, under which the vessel sailed, and the American flag, "that is, the stars and stripes," there were other flags in the vessel's bag. Chadwick says that they had the "confederate" flag on board, and cut up the American flag to make a burgee of it. A "burgee" is defined by lexicographers to be "a distinguishing flag or pennant." Leisk says that the vessel had an American flag on board, and another flag that looked similar to the American flag. Nellman says that she had the American ensign, which was cut up on the voyage to make a burgee of, and also "a flag of the Confederate States of America;" that he saw that flag a few days before the capture, in the sail cabin, in a bag with the burgee; and that, on the day of the capture, he found the burgee on the floor in the main cabin, and made thorough search for "the confederate flag," but could not find it. Allan says that they had the American colors on board, and another flag with stars and stripes, "but not as many stars as the old American flag;" and that he does not know whether that was the "confederate flag" or not, as he never saw one to know it, unless that was one. Chadwick, on his re-examination, says that after the capture of the vessel, and while the captors were in charge, he took this "confederate flag" from where it was hid in his clothes bag, and threw it overboard; and that this flag was intended to be displayed in connexion with a peculiar one, called the "Isle of Man's flag," or signal, "which was adopted by the southern States as a signal for a friendly vessel wishing to enter, and which should be protected, as far as possible, by them." This signal flag was probably the burgee of which the witnesses speak.

Captain Dyett says that the schooner was captured about eighty-two miles from Point de Yeacos, in Cuba. Chadwick says that the capture took place between Cuba and Key West, near the coast of Florida. Nellman and Allan say that the capture took place about thirty miles from Key West. Captain Dyett says that the capture took place about twenty-five miles from Key West, and about eighty-two miles from Cardenas.

Captain Dyett says that the vessel was bound for Cardenas; that the contents of her cargo were unknown to him, except that he saw some cases marked "long Enfield," which he supposed contained "long

Enfield guns," and he thinks he saw a few bales marked "socks;" and that at Erith, below London, on the Thames, some packages were taken in stamped "ball cartridges;" but, he says "she had no goods on board which were contraband of war, or otherwise prohibited by law." He also says that he cannot state any thing further in regard to the real and true property and destination of the vessel and cargo, except that, after he had discharged his cargo, he was to proceed to Sierra Leone, as stated in his letter of instructions. Chadwick, on his first examination, says that they were bound to Cardenas; that the cargo consisted of powder and munitions of war; that he understood, from the Captain and the shipping articles, that they were bound to Cardenas, and from there to Sierra Leone; and that he knows nothing beyond that. Leisk says that the vessel was bound to Cardenas and Sierra Leone; that he knew that her cargo, consisting of arms, powder, and soldiers' equipments, was contraband of war; and that he knows nothing about the destination of the vessel and cargo, except that they were bound to Cardenas. Nellman says that the vessel was bound to Cuba, Sierra Leone, or the West Indies, or some port in North or South America; and that he does not know to which of those several ports or places they were bound first. In this particular he confirms the very ambiguous and alternative language in the shipping articles. He also says that the cargo consisted of Enfield rifles, powder, cartridges, shot, shell, soldiers' accoutrements, such as knapsacks, belts, and pouches, and some heavy boxes, which he thinks contained small cannon; and that the lading consisted entirely of warlike stores and articles. He thus manifests a knowledge of the cargo, which is in striking contrast with Captain Dyett's ignorance. Nellman says that he thinks that these goods are contraband of war. Captain Dyett, however, says that Enfield rifles and ball cartridges are not contraband of war. Allan says that the vessel was bound to Cuba; and that the captain said he was going to Cardenas, and from there to the coast of Africa. As to the cargo, Allan says that he had seen boxes marked "long Enfields," which he took to be guns, and had heard there was powder, and had seen bales of blankets and other military equipments, and believes that she had a general cargo of arms and munitions of war.

Captain Dyett says that he does not know who owns the cargo, but his impression is that it belongs to Isaac, Campbell & Co.; that he does not know who were the laders of the cargo, or for whose risk and account the goods were, or what interest Major Helm had in them; and that he does not know to whom they would belong if restored and

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The Levi Rowe.

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bound to Nassau, N. P.; and that the capture was made near Little river, on the North Carolina coast. The witness seems to say, in answer to the twentieth interrogatory, that "the papers she had on board were burnt, torn, thrown overboard, destroyed, or concealed," but the writing is so indistinct that it is difficult to distinguish whether those statements are asserted or denied by the witness. He says that he knew that the port of Wilmington was blockaded; that he intended, when he came out, to elude the blockade, if he could; and that the cargo was the manufacture and produce of North Carolina. The evidence of the other two witnesses furnishes no defence of the vessel, nor is the case proved by the master changed in her favor.

The prize was unquestionably enemy property, and was wilfully carried out to sea, in violation of the blockade of Wilmington.

A decree of condemnation and forfeiture must be entered against the schooner and cargo.

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THE SCHOONER LEVI ROWE AND CARGO.

On further proofs, vessel and cargo condemned for an attempt to violate the blockade.

(Before BETTS, J., June 29, 1863.)

BETTS, J.: This suit was brought to hearing in January term last upon the preparatory proofs theretofore taken therein, and on the ship's papers and the documents captured with her at the time of her seizure as prize, no claimant having intervened in her defence. It was then considered by the court that the evidence presented against the prize, on the part of the libellants, was inadequate in law to authorize the condemnation prayed for. The court, being thereupon moved by them, made an order that they have one year from that time within which further evidence might be presented by them to the court "as to the point or place of the capture, and also as to the purpose of the voyage, and such other or further proof as they may be able to produce." The libellants, in pursuance of said order, took, before one of the prize commissioners of this court, on the 10th day of June instant, the deposition of Samuel B. Hoppin, an assistant surgeon in the United States navy. He testifies that he was on board of the United States gunboat Mount Vernon, being attached to her, about the 29th of November, 1862, and witnessed, at that time, the capture of the above prize by said gunboat; that the capture was made off New Topsail inlet, off the coast of North Carolina; that,

to give them up. Yet he says that he gave to the prize-master his ship's log-book, his official log-book, and his desk, with all the papers therein, being his private papers, and in no way relating to the vessel; and among the papers which he so gave up is found the comparatively unimportant letter from Saul Isaac to the British consul at Havana, and the telegrams and official papers of the vessel, which were calculated, on their face, to show a fair and honest voyage from London to Cuba. The two letters which he did withhold, namely, the instructions to himself and the letter to Helm, were the only documents on board which in any way connect Mr. Helm with this vessel and her cargo. This withholding or temporary suppression of those two letters, whose character and contents I have already commented upon, is one of those circumstances which is always regarded with suspicion, particularly where the suppression is made by a master. I shall have occasion to refer to this point hereafter, in connexion with the attempted suppression of important papers by Chadwick. That the suppression of these letters by Captain Dyett was premeditated, is shown by the testimony of Nellman, who says that Captain Dyett had a letter with him directed to some one, and that he heard him and Chadwick talk about it an hour or so before the capture, just when the capturing vessel was firing her first shot.

Chadwick says that he had some private letters from his wife and friends, which he gave to Leisk, the cook, to take care of, and that Leisk gave them up to some of the capturing officers. Leisk says that he had some papers belonging to Chadwick which he, Leisk, put into a tea-pot, where they were found by the searching officer; and that they were put there by the orders of Chadwick, to keep them out of sight. Nellman says that Chadwick, a few minutes before the capture, gave some papers to Leisk, with directions to put them in a tea-pot in the galley, for the purpose of concealing them, but that they were found by the United States officers. Allan says that he saw a bunch of papers taken out of the tea-pot by the boarding officer, and that, when they were found, the officer asked Leisk what they were, and Leisk said he thought it was tea.

On his re-examination Leisk says that some papers were given to him by Captain Dyett on the evening of the day they were captured, which Captain Dyett had put at the foot of his berth. Leisk says: "He told me, if he sent for these papers, I should know where to find them. He then went on board the Supply. When he returned, I

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asked him if he wanted those papers. He said he had already got them. This conversation was between us, there being no other person within hearing. We were in his state-room at the time, with the door closed." We have no explanation from any witness as to what those papers were. As to the papers which Leisk received from Chadwick and put into the tea-pot, where they were found by the boarding-officer, Leisk says, on his re-examination: "When the first officer handed me those papers he seemed anxious and uneasy, and, when he returned to the schooner to get his clothes, the first thing he said to me was, 'Have you got those papers?' I told him they were found by the officer. He then said, 'Why, in hell, did you not destroy them?' And likewise, 'By God, I am done!'"

Three of the papers which were concealed in the tea-pot, and which Chadwick speaks of as private letters, are letters to Chadwick containing some very important matter. One of them is dated at Bristol, England, October 29, 1861, and is addressed to Chadwick by a person who signs himself "R. H. Leonard, ship Alexander, Confederate States." Leonard expresses his pleasure that he is able to furnish Chadwick with "the book required," without price. He refers to it as a book which Chadwick had written for; says that it belongs to him, Leonard, and that, if it were worth £50, he would willingly give it to an enterprise of Chadwick's, and hopes it may be of valuable service to him. This book is the copy of the United States Coast Survey that was found on board of the vessel, containing charts, as has been seen, for entering very many of the blockaded ports of the enemy. In his testimony, given on his re-examination, Chadwick refers particularly to this book of charts as one which he recommended to his employers to purchase, and which they told him to purchase at any price. He says that he obtained one, which was presented to him by "R. H. Leonard, the mate of the ship Alexander, then lying in Bristol." These employers, Chadwick states, in his deposition on re-examination, to have been Mr. Hughes, "the commercial confederate agent for purchasing arms and ammunition for, and shipping the same to, the Confederate States," "William L. Yancey, of the United States," a South Carolina captain, named Connor, and Mr. Saul Isaac.

In the same letter, Leonard says: "Captain Johnson will mark out the chart; also the route, with some information; also write a letter which he will wish you to deliver or forward. Mrs. Bain will also have a letter for you to take, and forward to Virginia, if you arrive safe. I hope you may be successful. If so, report the old Alexander



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laying up at Bristol, with the palmetto tree constantly flying, and that her captain and officers are ready to aid the South in any enterprise. Tommy, I will not ask you to disclose the secret of your voyage. Be whatever it may, I believe it is true to the south. My heart and well wishes are with you, hoping you may be successful, and I may hear of the consequences. If that book prove serviceable to you, it will afford me more pleasure than its weight in gold in return. \* \* \*

\* I shall send the book by express this evening. I wish you to write me two or three mails before you put to sea, as Mrs. Bain will have some other letters to send. If you should fail, destroy."

Chadwick, on his re-examination, states that he received a letter from Captain Johnson, of the ship Naomi, of Charleston, S. C., giving him a description of the entrance to Charleston, and also received from him letters for his wife, and for other persons residing in the "Confederate States." In confirmation of this, we find that another of the three letters, being one dated at Bristol, England, October 29, 1861, and signed "John Johnson, ship Naomi," and addressed to "Mr. Benjamin H. Chadwick, schooner Stephen Hart, Surrey Canal, London," says: "Mr. Leonard, chief officer of the ship Alexander, and I had some private conversation this morning concerning *some things*, which I need not now repeat." Johnson then proceeds to give specific directions as to the mode of entering the harbor of Charleston, and adds: The chart of Charleston harbor, in the book called the U. S. Coast Survey, will be your best guide." He also says: "Enclosed is a letter, and I beg that you will, in case you succeed in safely reaching any southern port, forward the same to its destination. At the same time, do not let its encumbrance in any way interfere with your enterprise. Destroy it, if need be; but, if it could be managed to forward it safe to my wife, I should feel very grateful towards you for your kindness. I hope and trust that you will succeed in your undertaking. Observe secrecy by all means, and I can assure you that no information as regards the Stephen Hart's whereabouts or movements shall be gained from me by any one here or elsewhere. \* \* \* May the God of Justice guide you in safety to your port of destination is the fervent wish of one who loves the south, its institutions, and its people.

The remaining one of the three letters is from Leonard, and is addressed "to Mr. B. H. Chadwick, *alias* Tommy, 1st officer, Stephen Hart," and is written at Bristol, England, but without date. It says, among other things, "Give me the particulars of your voyage, what your cargo consists of, and if you have got any guns on board."

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Captain Dyett, until his examination *in preparation* to him from S. Isaac, Campbell & Isaac to Helm, and the attempt by Leonard and Captain Johnson, as tending to show the illicit transaction connected with this and Chadwick were connected, and endeavored to produce the evidence which they had of papers is a strong circumstance (157.) It is not, however, either in itself, held to furnish, of itself, sufficient evidence, but is a circumstance open to explanation. (See *Johnson*, 480; *The Pizarro*, 2 Wheaton, 227.) But, if the party be not prompt and frank, or be weak or futile; if the party be under heavy suspicions, or if there be a vehement presumption of bad faith or gross prevarication, it is ground for the denial of further proof, and the condemnation ensues from defects in the evidence, which the party is not permitted to supply. (1 Kent's Comm., 158; *The Pizarro*, 2 Wheaton, 227; *Bernardi v. Motteaux*, Doug., 554, 559, 560.) In the case of the *Two Brothers*, (1 Ch. Rob., 131,) the master had burned some letters, before capture, which he said were only private letters. Sir William Scott says, in commenting upon that circumstance: "No rule can be better known than that neutral masters are not at liberty to destroy papers, or, if they do, that they will not be permitted to explain away such suppression by saying 'they were only private letters.' In all cases it must be considered as a proof of *mala fides*; and, where that appears, it is a universal rule to presume the worst against those who are convicted of it. It will always be supposed that such letters relate to the ship or cargo, and that it was of material consequence to some interests that they should be destroyed." In the case of the *Rising Sun*, (2 Ch. Rob., 104,) Sir William Scott says: "Spoliation is not alone, in our courts of Admiralty, a cause of condemnation; but, if other circumstances occur to raise suspicion, it is not too much to say, of a spoliation of papers, that the person guilty of that act shall not have the aid of the court, or be permitted to give further proof, if further proof is necessary."

The withholding by the master of the two letters, in the present case, until his examination, while he gave up to the captors the letter

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to the British consul at Havana, and, as he says, all his own private papers, would have been a complete suppression of the two letters in question, if their production had not been compelled by the stringent character of the standing interrogatories. In the case of the *Concordia* (1 Ch. Rob., 119) the master withheld his instructions until the time of his examination. Sir William Scott says: "This was certainly incorrect. It is a master's duty to produce all his papers, and, least of all, to withhold his instructions, which are very important papers to be communicated for the interest of both parties." So, also, the concealment by Chadwick of the letters to him, which showed the true character of the enterprise of the *Stephen Hart*, would have been as effectually a destruction of those papers, for the purposes of this case, if they had not been found upon the search, as if they had been actually thrown into the sea and lost. And the suspicion which the law attaches to a spoliation of papers arises with equal force from an attempted spoliation.

That Captain Dyett and all of his crew knew of the blockade of the enemy's ports, is abundantly established by the evidence. Nellman says that "all on board knew that the southern States, including Florida, were in a state of war with the United States, and the southern ports blockaded by the United States navy." "It was a matter of conversation on board during the voyage." Captain Dyett says: "I knew of the rebellion in the southern States, and that some of the southern ports were blockaded."

Captain Dyett says that the vessel was steering for Cardenas when she was captured, and that her course was not altered upon the appearance of the capturing vessel. Chadwick, on his first examination, says the same thing. Nellman says that when they first saw the capturing vessel, about six o'clock in the morning, the *Stephen Hart* was standing towards Key West, and continued on that course until about twelve o'clock, when she tacked and steered towards Havana, and was steering towards Havana when captured; that their course, at all times when wind and weather permitted, was towards Cardenas, except in the instance mentioned, and except when obliged to pursue another course on account of head winds; and that the latter was the reason why the vessel was steering towards Havana at the time of her capture. Nellman says that he had the watch when the capturing vessel was first seen, and that Chadwick had the watch from eight a. m. until noon, and he (Nellman) again from noon to four o'clock. Nellman and Allan say that the capture was made

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about two o'clock p. m. Although Captain Dyett, and Chadwick on his first examination, say that the course of the vessel was, at all times when wind and weather would permit, towards Cardenas, yet it is apparent that she set out from England with the intention of running the blockade if she could, and she was captured in a position consistent with that intention.

The evidence which has been reviewed establishes, beyond reasonable doubt, that the cargo of the Stephen Hart was intended, on its departure from England, to be carried into the enemy's country, for the use of the enemy, by a violation of the blockade of some one of the enemy's ports, either in the Stephen Hart or in another vessel into which the cargo was to be trans-shipped, for the purpose of being transported by sea to the enemy's country. This is clearly established without the aid of the testimony given by Chadwick on his re-examination. Some portions of that testimony have been incidentally alluded to. The other main facts detailed by Chadwick on his re-examination are entirely consistent with all the rest of the evidence in the case, and are corroborated by that evidence. Some of the points of corroboration have been already alluded to, and I shall refer to others.

Chadwick says, on his re-examination: "The vessel was bound to Cardenas, in Cuba; but the destination of her cargo was certainly to one of the confederate States, and the vessel was, in like manner, so destined, if Charles J. Helm, the confederate agent at Cuba, should so direct. That voyage began in London, and was to have ended at Cardenas or any port in the confederate States which the aforesaid confederate agent should direct." He also says: "The vessel was steering for Cardenas, but that port was to be used only as an intermediate port of call, and of transhipment of the cargo, if necessary, or ordered by Charles J. Helm." He also says that after he had gone in the vessel, then called the "Tamaulipas," from New Orleans, by the way of Havana and Matanzas, to Falmouth and Bristol, England, and thence in the same vessel to London, he was requested to go to No. 71 Jermyn street, London. He adds: "I accordingly went, and was there introduced to Mr. Isaacs, the head of the firm of Isaacs, Campbell & Co., and also to a Mr. Hughes, whose first name I did not learn, and who told me he was the commercial confederate agent for purchasing arms and ammunition for, and shipping the same to, the confederate States. He asked me how I would like to run the blockade of the southern States in the Stephen Hart.

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I answered, 'That I would sooner go in a steamer.' There was no definite arrangement made at that time. I was again sent for, and went to the same place, where I met Mr. Isaacs, the same Captain Hughes, and William L. Yancey, of the United States. There was also a South Carolina captain there. I was taken by Captain Hughes and this South Carolina captain, (whose name was Connor,) into another room, and there fully examined in regard to my knowledge of the southern coast of the United States. I was then employed by Captain Hughes as a pilot agent, and to leave the Stephen Hart and go on board of a steamer which he had chartered, and which was then taking in a cargo of arms and ammunition for the confederate States. I was to leave the Stephen Hart, go ashore and take lodgings, and observe secrecy until I was called, which I did. About a week afterwards I was told to go on board of the steamer Gladiator, then lying in the Thames, and examine and see if she had proper boats for landing her cargo in the surf on the southern coast, if required, and report to Hughes. I did so, and reported that she had, with the exception of one boat. I was then ordered to take my things on board of that vessel, (the Gladiator,) and proceed in her to Nassau, and there either obtain a pilot for her, or else pilot her myself into some southern port of the confederate States between Cape Canaveral, in Florida, and York river, Virginia. I went aboard accordingly. That vessel was loaded with arms, ammunition, and army outfits. After I got aboard, it was found that she could not carry all the cargo which had been bought for her, and, accordingly, what portion thereof could not be taken by the Gladiator was put aboard of the Stephen Hart, together with other like cargo to fill her up. I was ordered to proceed from the Gladiator and take charge of the loading and fitting out of the Stephen Hart, which I did. On my recommendation to Captain Hughes, Captain Dyett was appointed master of the Stephen Hart, while I was to go in her nominally as mate, but really in charge of the cargo, consisting of arms and munitions of war. The vessel proceeded down the Thames several miles, and there took aboard a quantity of powder." Nellman testifies to the same effect as to the place where the powder was taken on board. Chadwick proceeds: "Before the Stephen Hart left, I was instructed by Captain Hughes to proceed to Cuba, that is, to Cardenas, and there to work under the instructions of Charles J. Helm, the agent for the 'confederate States' at that place. He said the cargo was to be trans-shipped into a steamer, which could be used with greater

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facility in running the blockade, or she might be ordered to proceed herself." The connexion of Hughes with the transaction, and his being an agent for "the confederate States," and the lader of the cargo on board of the Stephen Hart, are also testified to by Nellman. The contents of the letter of instructions to Captain Dyett confirm all that Chadwick says, on his re-examination, as to the connexion of Helm with the matter, and as to the certain destination of the cargo and the contingent destination of the vessel being to a port of the enemy. It is stated by Nellman that he heard Chadwick say that the cargo was going to the enemy's country, and that a steamer would receive it at Cuba very probably, and would carry it thence to a port of the enemy. And it is apparent, from what Nellman says, that it was understood, on board of the Stephen Hart, that the cargo was destined for a port of the enemy, and was to be carried there in that vessel, or to be transhipped to another vessel for the same purpose. Chadwick proceeds: "The agreement was that I should have \$45 a month for all the time I was employed, including any time I might be detained or imprisoned, in consequence of any attempt to run the blockade; and if I had gone in the Gladiator I was to have received a bounty of \$500; and, in the Stephen Hart, if ordered by Helm to cross the blockade, I was to have a bonus, to be agreed upon with him." The shipping articles confirm this statement of Chadwick's to a certain extent, as they show that his wages were to be £9 per month. They also show that the wages of the mate, whose place he took, were only £6 per month. He then goes on to state, as he had already stated in his affidavit upon which the order for his re-examination was made, that he was induced to state these facts, not by any persons in any way connected with the libellants or captors, but solely by the persuasions of his wife, "who is a loyal woman, and now residing in Boston."

The absence from on board of the Stephen Hart of the bills of lading and manifest, to whose existence the master testifies, and of all invoices of the cargo, has been already referred to. The absence of these papers, in time of war, is a suspicious circumstance, as affecting the question of the neutrality of the cargo and the honesty of the trade. (1 Kent's Comm., 157; Halleck on International Law, chapter 25, section 25, page 622 )

It has been strongly urged upon the court, in the present case, that as Harris, the alleged owner of the vessel, is not shown to have any

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interest in any of the cargo, the vessel can be visited with no greater penalty for carrying contraband articles, even though they were intended for the enemy, than the loss of freight and expenses. But, even on the assumption that the grounds already set forth in respect to the real ownership of the vessel, are not sufficient for her condemnation, the court is of opinion that her condemnation must, under the circumstances, follow the condemnation of the cargo, the latter being contraband of war, and intended, on its departure from England, to be carried into the enemy's country by a violation of the blockade. The contingent destination of the vessel to a blockaded port would be sufficient, under the authority of the case of the *Richmond*, before cited, to warrant her condemnation. But, even if her destination was only to Cardenas, yet, as her cargo was intended, on its departure from England, to be introduced into the enemy's country, by being transhipped from the vessel at Cardenas, condemnation must equally follow, because of the employment of the vessel in this unlawful enterprise, under the circumstances disclosed in this case. As testified to by Captain Dyett, there was no charter-party for the voyage. He says that he was put in charge of the vessel, not by Harris, her alleged owner, but by S. Isaac, Campbell & Co., the claimants of the cargo. No instructions from Harris to Captain Dyett are found, but only instructions to him from S. Isaac, Campbell & Co. Harris, therefore, surrendered the entire control of his vessel to that firm, and her master must be regarded as their agent, and the claimant of the vessel must be held responsible for the use to which the master and the claimants of the cargo put the vessel. (*Jecker v. Montgomery*, 18 Howard, 110, 119.) That use was the carrying, for a portion of the distance on its way to the enemy's country, of a cargo contraband of war, intended for the use of the enemy, and to enter the enemy's port by a violation of the blockade. This use of the vessel was, under the authorities before cited, unlawful in its inception, and, the entire transportation of the cargo from England to the enemy's country being unlawful, the vessel must be condemned for having been permitted, by Harris, to be used, at the pleasure of S. Isaac, Campbell & Co., in carrying out a portion of the unlawful purpose. Such use was, under the circumstances, in judgment of law, with the knowledge and assent of Harris. Chadwick, on his re-examination, states that Harris wished him to continue in the *Stephen Hart* as mate; "that either she would go to, or else he would put me on board of another vessel to go to the Confederate States."

In the case of the *Ringende Jacob*, (1 Ch. Rob., 89,) Sir William Scott says that, under the ancient law of Europe, the carrying of a contraband cargo rendered the vessel liable to condemnation; but that, in the modern practice of the courts of admiralty of England, a milder rule has been adopted, and that the carrying of contraband articles is attended only with the loss of freight and expenses, "except where the ship belongs to the owner of the contraband cargo, or where the simple misconduct of carrying a contraband cargo has been connected with other malignant and aggravating circumstances." And he cites, as an exception, a case attended with particular circumstances of falsehood and fraud, both as to the papers and the destination of the voyage, and in which there was an attempt, under colorable appearances, to defeat the rights of the belligerent. The same doctrine is laid down in the case of the *Jonge Tobias*, (1 Ch. Rob., 329.) In the case of the *Franklin*, (3 Ch. Rob., 217,) a neutral vessel, ostensibly bound to a neutral port, and whose cargo consisted of several articles which were contraband if going to the enemy, was held, by Sir William Scott, to have been captured while really on her way to a port of the enemy. He says: "I have had frequent occasion to observe that it is very difficult to detect a fraud of this species in the particular instances. Pretences and excuses are always resorted to, the fallacy of which can seldom be completely exposed; and therefore, without undertaking the task of exposing them in the particular case, the court has been induced (and I hope not unwarrantably) to hold generally, in each case, that the certain fact shall prevail over the dubious explanations." "I am satisfied, on the facts of this case, that it was the plan of the voyage to carry the ship fraudulently, under a false destination, into a Spanish port. The consequence will be, that this fraudulent conduct, on the part of those who are concerned in the ship, will justly subject her to confiscation. Anciently, the carrying of contraband did, in ordinary cases, affect the ship, and, although a relaxation has taken place, it is a relaxation, the benefit of which can only be claimed by fair cases. The aggravation of fraud justifies additional penalties." He then announces it as the settled rule of law, "that the carriage of contraband, with a false destination, will work a condemnation of the ship as well as the cargo." In that case the owner of the ship was not the owner of the cargo, but, being himself a neutral, had entered into a charter-party for a voyage of the vessel from one neutral port to another neutral port. In a note to the case, these very appropriate remarks are made: "The relaxation of the old



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rule has been directed, in its practical application, as well as in its origin, only to such cases as afford a presumption that the owner was innocent, or the master deceived. Where the owner is himself privy to the transaction, or where his agent interposes so actively in the fraud as to consent to give additional cover to it by sailing with false papers, all pretence of ignorance or innocence is precluded, and there seems to be no further ground, consistent with equity and good sense, upon which the relaxation in favor of the ship can any longer be supposed to exist." The same principles are laid down in the cases of the *Mercurius*, (1 Ch. Rob., 288.) the *Edward*, (4 Ch. Rob., 68,) and the *Neutralitet*, (3 Ch. Rob., 295.) In the latter case, Sir William Scott says that, where a vessel is carrying contraband articles under a false destination or false papers, those circumstances of aggravation constitute excepted cases out of the modern rule, and continue them in the ancient one. In the *Ranger*, (6 Ch. Rob., 125,) which was the case of an American vessel with a cargo which was documented for a neutral port, but was going to the enemy's port, and was condemned as contraband, Sir William Scott says: "I also condemn the vessel, as employed in carrying a cargo of sea stores to a place of naval equipment, under false papers. It is described, I perceive, as an American vessel. But, if the owner will place his property under the absolute management and control of persons who are capable of lending it, in this manner, to be made an instrument of fraud in the hands of the enemy, he must sustain the consequence of such misconduct on the part of his agent." In the *Oster Risoer*, (4 Ch. Rob., 199,) Sir William Scott held, that a master could not be permitted to aver his ignorance of the contents of contraband packages on board of his vessel; that he was bound, in time of war, to know the contents of his cargo; and that, if a different rule could be sustained, it might be applied to excuse the carrying of all contraband.

One important circumstance, to show that the cargo of the *Stephen Hart* was intended for the enemy, is the fact that a part of it consisted of ninety thousand buttons, marked with the initials, "C. S. A.," which it is well understood stand for the words "Confederate States of America," or "Confederate States Army," the buttons being such as are used on army clothing for the three services of an army.

This review of the facts in this case leads to the conclusion that the vessel and her cargo must both of them be condemned. No doubt is left upon the mind that the case is one of a manifest attempt to introduce contraband goods into the enemy's territory by a breach of

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blockade, for which the vessel must be held liable to forfeiture, as well as her cargo. Chadwick was evidently employed by reason of his being a citizen of the United States, familiar with the enemy's country, and qualified to conduct the vessel into one of the blockaded ports. The vessel was captured in a position convenient for running the blockade. The cargo consisted of arms, munitions of war, and military equipments, and, among them, a large quantity of military buttons, stamped in such a manner as to render them capable of no appropriate use save for the infantry, cavalry, and artillery of the enemy's army, thus showing that the enemy's country was their only appropriate destination. The absence of the manifest and bills of lading is not satisfactorily accounted for, and the want of any invoices and of any charter-party is a circumstance of great weight against the lawfulness of the commerce. The attempt, by the master, to suppress his letter of instructions and the letter to Helm, the agent of the enemy in Cuba, and the attempt of the mate to conceal the letters which show that the design was that the Stephen Hart should, under his guidance, enter a blockaded port of the enemy, and which also contain specific directions for entering the harbor of Charleston, justify the conclusion that Charleston, or some other port of the enemy, was the real destination of the vessel and her cargo. The absence of any charter-party, and of any instructions from Harris to Captain Dyett, and the entire surrender by Harris of the control of the vessel to the loaders of the cargo, and to the master as their agent, involve the vessel in all the guilt which attaches to the cargo. The object of carrying the flag of the enemy could only have been that it might be used for the purpose of entering the enemy's ports—a conclusion strengthened by the fact that it was thrown overboard at the time of the capture. The charts found on board are charts of such a character as to enable a vessel to enter many of the blockaded ports. The letter concealed by the mate, which contains directions for entering the harbor of Charleston, is one which he had a motive to preserve by concealing and not to destroy, because, upon the regular papers of the vessel, he must have indulged the hope that she would have been permitted, after a search, to proceed upon the voyage indicated by her papers, and thus that the letter in question would afterwards become useful on a further voyage to the port of the enemy. There is an absence of all papers and circumstances to warrant the conclusion that there was any intent to dispose of the cargo at Cardenas, in the usual way of lawful commerce. The consignee of the entire cargo was the

agent of the enemy, and the cargo was laden on board by the agent of the enemy in London. The asserted ignorance of the master as to the contents of his cargo, and as to the fact that arms are contraband of war, and the ambiguous destination set out in the shipping articles, are circumstances which, with many others, go to swell the volume of suspicion attaching to the enterprise. In addition to all this, there is the positive evidence which has been referred to, particularly of Chadwick and Nellman, as to the actual destination of the cargo. All the material facts of the case, which lead to a condemnation, are proved without any resort to the re-examinations either of Leisk or of Chadwick.

This is not a case for further proof, and no application has been made on the part of the claimants to supply any further proof as to any point. There must, therefore, be a decree condemning both vessel and cargo.\*

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#### THE BARK SPRINGBOK AND CARGO.

Invocation of proofs from two other cases on the docket of the court for trial at the same time with this case, allowed, under the 33d standing rule of the court in prize cases.

*Held*, that the inference was a fair one, that the cargo of the vessel in this case had the same destination which the court had found to be the destination of the cargoes in the other two cases, that is, to the enemy's country through a breach of the blockade.

In addition to the practice of invocation, it is the uniform practice of prize courts to take cognizance of the *status* of the claimants who appear before it, with a view to see whether they come with clean hands, or whether they have been before engaged in a traffic similar to that with which they are charged in the particular case.

The principles announced by this court in the case of *The Stephen Hart* restated and applied.

The well-settled rule of law is, that where contraband goods, destined for the use of the enemy, are found on board of a vessel, all other goods on board of that vessel belonging to the owner of the contraband articles, even those goods which are innocent, must share the fate of the contraband goods.

The penalty of contraband extends to all the property of the same owner, involved in the same unlawful transaction; and, therefore, if articles which are contraband, and are going to the enemy, are on board of the same vessel with articles which are not contraband, and all the articles belong to the same owner, all will be alike condemned, the innocent articles being affected with the contagion of the contraband articles.

Alleged ignorance of the master as to the reason assigned for the capture of his vessel.

It is a principle of prize law, that a master cannot be permitted to aver his ignorance of the contents of contraband packages on board of his vessel, and that he is bound, in time of war, to know the contents of his cargo.

The cargo of the vessel was intended to be delivered in the enemy's country, by trans-shipment, at Nassau, into a vessel in which it should be carried through the blockade; and such was the intended destination of the cargo on its departure from England.

The papers found on board of the vessel, so far as they represent Nassau as the ultimate destination of the cargo, were false and simulated.

There was no *bona fide* intention of landing the cargo at Nassau, for sale or consumption there, so that it might be incorporated, at Nassau, into the common stock in that market; but, if it was

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\* An appeal was taken to the Supreme Court from this decree, and it was there affirmed March 26, 1866.

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to be landed there at all, it was only to be so landed for the purpose of being trans-shipped, in bulk, into another vessel, in pursuance of the original destination of the cargo to the enemy's country.

Defective character of the bills of lading and manifest of the cargo.

No invoices of the cargo were found on board of the vessel.

The absence from on board of a vessel in time of war of invoices of her cargo is laid down by all the authorities as being a suspicious circumstance, as affecting the question of the honesty of the commerce.

In time of war a vessel should be furnished with documents showing the particulars of her cargo, especially where the vessel is documented for a neutral port in the vicinity of the ports of one of the belligerents, and that neutral port is one extensively used as a mere port of call and of trans-shipment for vessels and cargoes bound to ports of the enemy, and where the parties claiming to own the cargo have been engaged in previous adventures connected with running the blockade, or introducing cargoes of contraband goods into the enemy's country.

The fact that the test oath to the claim in this case is made not by the claimants but by their proctor, and the peculiar language of the proctor's affidavit, commented on.

The contraband articles found on board of the vessel condemned, as having been destined for the enemy's country, and the entire cargo also condemned, as belonging to the owners of the contraband goods.

The vessel, in this case, was employed in carrying on the unlawful enterprise of transporting contraband articles on their way to the enemy's country, to be there introduced by a violation of the blockade, and she was so employed under such a state of facts as made her owners responsible for the unlawful transportation of the contraband articles, and for the acts of the master in relation to such transportation, to such an extent as to justify the condemnation of the vessel.

Formerly, the mere fact of carrying a contraband cargo rendered the vessel liable to condemnation, but the modern rule is different. The carrying of contraband articles is now attended only with loss of freight and expenses, unless the vessel belongs to the owner of the contraband articles, or unless there are circumstances of fraud as to the papers, and the destination of the vessel or the cargo, and thus an attempt, under colorable appearances, to defeat the rights of the belligerent.

Where the owner of the vessel is himself privy to the carriage of contraband, or where the master of the vessel, as the agent of such owner, interposes so actively in the fraud as to consent to give additional color to it by sailing with false papers, the modern relaxation in favor of the vessel no longer exists.

The master of the vessel, in this case, was carrying a cargo composed in part of contraband articles, under false papers. He, and the owners who appointed him as their agent, must be regarded as affected with knowledge of the contraband articles on board, and of their destination, to the same extent as if actual knowledge thereof were brought home to the master and the owners.

And the owners are responsible for the documenting of the cargo by the master, by means of the bills of lading, to a neutral port, when it was in fact destined, composed in part of contraband goods, to a port of the enemy.

If the owner of a vessel places it under the control of a master who permits it to carry, under false papers, contraband goods, ostensibly destined for a neutral port, but in reality going to a port of the enemy, he must sustain the consequence of such misconduct on the part of his agent.

From the moment a vessel, having on board contraband articles which have a destination to a port of the enemy, leaves her port of departure, she may be legally captured; and it is not necessary to wait until the goods are actually endeavoring to enter the enemy's port; for, the transportation being illegal at its commencement, the penalty immediately attaches.

The privilege of further proof is always forfeited where there has been any deception or fraud.

Vessel and cargo condemned.

(Before BETTS, J., decided July 30, 1863, but this opinion delivered subsequently.)

BETTS, J.: On the 3d of February, 1863, in latitude 25° 35' north, and longitude 73° 40' west, the United States steamer Sonoma captured, as lawful prize of war, the bark Springbok. The place of

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capture was from 150 to 200 miles east of the port of Nassau, N. P. A libel was filed against the Springbok and her cargo on the 12th of February, 1863. The libel alleges that the bark, when captured, was "making for the harbor of Nassau."

On the 26th of February, 1863, the court made an order that the cargo of the bark be unladen by the marshal, under the superintendence of the prize commissioners, and be stored in some suitable warehouse, and that an inventory of the cargo be made by the marshal. The reason for making this order was that the cargo was being damaged, by reason of the leaky condition of the deck of the vessel. The report of the prize commissioners, as to the discharge of the cargo under this order, was filed on the 9th of April, 1863, and was accompanied by a list of the packages and cases composing the cargo, and of their marks and numbers; but the packages were not opened. So far as this report shows, the cargo consisted of 4 cases of samples, 3 cases and 4 hogsheads of merchandise, 10 kegs of saltpetre, 15 barrels of mustard, 17 barrels of Epsom salts, 18 bags of pimento, 10 bags of cloves, 60 bags of pepper, 4 cases of root ginger, 2 cases of nutmegs, 220 bags of coffee, 150 chests and 150 half chests of tea, 2 cases of drugs, 1 coil of rope, 4 barrels of pork, 3 water casks,  $\frac{1}{2}$  of a barrel of pitch, 86 bales of dry goods, 641 cases of dry goods, and a quantity of tin plate in boxes, said to be 606 boxes. One of the cases of samples was marked, "B. W. Hart, Esq., Nassau." Eighteen of the cases of dry goods were reported as marked, *A. is a diamond, S. I. C. & Co.*

On the 10th of March, 1863, a claim to the bark was filed on behalf of Thomas May and John E. Oxenberry, both of Falmouth, England, and of the personal representatives of Richard May, deceased, as owners of the bark. The claim set up that the vessel was a British vessel; that her owners were British subjects; and that, at the time of her capture, she was bound from London to Nassau, N. P., and was to have landed her cargo at Nassau, and that there, as to such cargo, her voyage would have fully ended. This claim on behalf of the owners of the vessel was made by James May, the master of the vessel, and the test oath to the claim was made by the master. In that oath he represents himself as the son and agent of Thomas May.

A claim to the cargo of the bark was filed on the 10th of March, 1863, by Mr. Archibald, the British consul at New York, who intervened for the interest of its owner, and set up that the cargo belonged to British subjects, but did not disclose the name of any owner, and

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*Held*, also, that the claimant of the vessel was, under the circumstances of this case, responsible for the use to which the master and the claimants of the cargo put the vessel, namely, the carrying, for a portion of the distance on its way to the enemy's country, of a cargo contraband of war, intended for the use of the enemy, and to enter the enemy's port by a violation of the blockade.

The carriage of contraband with a false destination works a condemnation of the vessel as well as the cargo.

Vessel and cargo condemned for an attempt to introduce contraband goods into the enemy's country by a breach of blockade.

(Before BETTS, J., decided July 30, 1863, but this opinion delivered subsequently.)

BETTS, J.: The schooner *Stephen Hart* was captured, as lawful prize of war, by the United States vessel-of-war *Supply*, on the 29th of January, 1862, in latitude 24° 12' north, and longitude 82° 14' west, off the southern coast of Florida, about 25 miles from Key West, and about 82 miles from Point de Yeacos in Cuba, and was sent to the port of New York for adjudication, under convoy of her captor. A libel was filed against her in this court on the 18th of February, 1862. On the 1st of May, 1862, a claim to the vessel was interposed by John Myer Harris, of Liverpool, England, as her sole owner. The test oath to that claim was made by Charles N. Dyett, the master of the schooner. On the same day, a claim was put in to the whole of the cargo of the schooner, by Samuel Isaac, on behalf of himself and Saul Isaac, as co-partners and subjects of Great Britain, doing business in England under the firm name of S. Isaac, Campbell & Co., and claiming to be the sole owners of the cargo. The test oath to that claim was made by Samuel Isaac. On the 25th of October, 1862, another claim to the schooner on behalf of Harris was interposed. In this second claim Harris is described as late of Liverpool, England, but now of Sherbro', on the western coast of Africa, at present residing in England, merchant. This second claim sets up that he is the sole owner of the schooner, and is a subject of the crown of Great Britain.

In the test oath to the second claim of Harris, and which test oath is made by him, it is alleged that, on the 28th of September, 1861, he agreed to become the purchaser of the schooner for £1,750, to be paid October 28, 1861; that it was afterwards arranged that the money should be paid on the 14th of October; that an abatement of £5 10s. 3d. was thereupon made from the purchase money; that the balance of £1,744 9s. 9d. was paid; that the vessel was at Bristol, England, at the time of her sale; that, after such purchase, she took a cargo from Bristol to London, and was then loaded partly at London and partly at Erith, with a cargo of arms, ammunition, and military cloth-

letter from Spyer & Haywood, as agents of the charterer, to Captain May; a letter from Spyer & Haywood, as agents of S. Isaac, Campbell & Co., to B. W. Hart, esq., Nassau; and sundry other papers, such as a receipt for light duties, a certificate of the shipment of the crew, a clearance, some shipping bills, and a victualling bill.

The log-book, the bills of lading, the manifest, the clearance, and all the other official papers of the vessel speak of her voyage as one from London to Nassau. The date of her clearance from London was December 8, 1862.

The register of the bark describes her as a British-built vessel, registered at Falmouth on the 14th of March, 1860, and of the burden of 188.17 tons. The certificate of registry states that, at its date, Thomas May was sole owner of the vessel; and there is an indorsement upon it, showing that on the next day, namely, the 15th of March, 1860, Thomas May, Richard May, and John E. Oxenberry became the registered owners. It appears, by the certificate, that Richard May was master of the vessel at its date, and, by indorsements on the certificate, that on the 17th of May, 1862, Thomas May was appointed master; that on the 19th of May, 1862, one Percival was appointed master; and that on the 25th of November, 1862, James May was appointed master.

The charter-party is dated at London, November 12, 1862. The charter is from "W. Barter & Co., by authority of T. May," to Thomas Sterling Beghie, of London, for a voyage to Nassau, with a cargo of "lawful merchandise goods," the freight to be paid one-half in advance, on clearance, and the remainder, in cash, on delivery; thirty running days to be allowed the freighter for loading at the port of loading and discharging at Nassau. There is an indorsement on the charter-party, dated "London, 8th December, 1862," and signed "Spyer & Haywood," as follows: "Sixteen days have been expended in this port in loading and despatching the vessel, this day included."

One of the letters found on board is signed "Spyer and Haywood, agents for the charterer," and is dated "London, 8th December, 1862," and is addressed, "Captain James May, barque Springbok." It says: "Your vessel being now loaded, you will proceed at once to the port of Nassau, N. P., and, on arrival, report yourself to Mr. B. W. Hart there, who will give you orders as to the delivery of your cargo, and any further information you may require." The other letter is signed "Spyer & Haywood, agents for Messrs. S. Isaac,

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Campbell & Co.," and is dated "London, 8 Decr., 1862," and is addressed "B. W. Hart, esq., Nassau." It says: "Under instructions from Messrs. S. Isaac, Campbell & Co., of Jermyn street, we enclose you bills of lading for goods shipped per Springbok, consigned to you."

The shipping articles are for "a voyage from London to Nassau, N. P., thence, if required, to any other port of the West India Islands, American States, British North America, east coast of South America, and back to the final port of discharge of cargo in the United Kingdom, or continent of Europe, between the Elbe and Brest, and finally to a port in the United Kingdom; voyage, probably, under twelve months."

The five bills of lading found on board were severally marked by the prize commissioners Nos. 2, 3, 4, 5, and 6, and are known by those numbers in the proceedings in the cause. Nos. 2, 3, and 4 are each of them marked, "Captain's copy," and are not signed by the master. Nos. 5 and 6 are, each of them, signed by the master. No. 2 is a duplicate of No. 6, and No. 4 is a duplicate of No. 5. There is no duplicate of No. 3. It is supposed that Nos. 5 and 6 were those enclosed in the letter from Spyer & Haywood to Hart, as they are each of them signed by the master, and each has upon it a revenue stamp, while Nos. 2, 3, and 4 are wanting in said stamps, for the reason, probably, that they are merely copies retained by the master.

In Nos. 2 and 6 the shippers are "Moses Brothers," and both of those bills of lading are indorsed "Moses Brothers," in blank. The shipment by bill No. 6 is "six hundred and sixty-six packages of merchandise, being marked and numbered as in the margin," to be delivered at Nassau, N. P., "unto order;" freight to be paid "as per charter party." The margin of this bill specifies 150 chests and 150 half chests of tea, 220 bags of coffee, 4 cases of ginger, 19 bags of pimento, 10 bags of cloves, and 60 bags of pepper. This enumeration covers 613 of the 666 packages. The remainder of the packages, 53 in number, are specified in the margin of the bill simply as 7 cases, 10 kegs, and 36 casks. The marks and numbers on all the packages are stated in the margin of the bill. The contents of bill No. 2 are the same in all respects as those of No. 6.

Bill No. 3 is a "captain's copy," of which there was no original found on board. It is for two packages of merchandise, specified in the margin, one as "A. in a diamond, 264, 1 bale," and the other as

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letter from Spyer & Haywood, as agents of Thomas May; a letter from Spyer & Haywood, as agents of May & Co., to B. W. Hart, esq., Nassau; and a receipt for light duties, a certificate of clearance, some shipping bills, and a log-book.

The log-book, the bills of lading, and all the other official papers of the ship from London to Nassau. The date of arrival was December 8, 1862.

The register of the ship is registered at Falmouth of 188.17 tons. The register No. 4 is not indorsed. In all other respects it is like the other bills. The register contains a list of the 2,007 packages covered by the bill of lading, but does not describe them any further than by stating the number of cases, bales, boxes, chests, half chests, bags, and casks. It states Spyer & Haywood to be shippers of the cargo, and Moses Brothers to be shippers of the 666 packages. The bill of lading is dated "London, 8 Dec'r, 1862," and is signed "Spyer & Haywood, brokers."

The log-book speaks of the voyage on which the vessel was when she was captured, as one from London to Nassau. It shows that the vessel came on board on the 8th of December, 1862; that the pilot came on board the next day; that then the vessel was towed down the river from London as far as Erith; and that, on the 10th of December, she was towed to Gravesend, and thence made sail, the pilot leaving her on the 12th. The sea log commences at noon of the 13th. On the 15th the vessel put into Falmouth on account of heavy weather, where she remained until the 23d, when she proceeded on her voyage. The last entry in her log is at noon on the 1st of February, 1863, in latitude 24° 18' north, and longitude 69° 04' west.

The cargo books give the numbers and marks of each package composing the cargo, with the length, breadth, depth, and solid contents of each, but the packages are simply mentioned as cases, bales, bags, casks, and half barrels, without a designation of the contents, except in the instances of the 606 boxes of tin, the 220 bags of coffee, the 4 cases of ginger, the 10 bags of cloves, the 150 chests and 150 half chests of tea, the 60 bags of pepper, and the 3 cases of samples.

and other par-

by the master, shippers are stated to be "one merchandise, as per specification of the consignment merely stated to be 648

The marks and numbers on the back of the bill. Only one of

its mark and number, and that one "B. W. Hart." No. 5 is indorsed in the bill. No. 4 is not indorsed. In all other

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voices of any part of the cargo found on board of

63, the court made an order, on the application, that the marshal cause the packages marked Nos. 3 and 4, found on board to be examined in the presence of the counsel and that the marshal take an inventory of the contents in the presence of the parties, and make a report to the court, showing the character and quantity of the packages. This order was made, upon its being read to the court that, on the unloading of the cargo by the marshal, there had been discovered containing brass army and navy buttons, some of which were stamped "C. S. N.," and others "A.," "I.," and "U. S.," respectively, and all of which purported, by the stamp on the inside, to be manufactured by S. Isaac, Campbell & Co., of London, and also 1 case of swords, 1 case of sword bayonets, 10 kegs of salt-petre, and 606 boxes of tin.

On the 27th of May, 1863, the marshal's report of the examination of the packages mentioned in the bills of lading marked Nos. 3 and 4 was filed, accompanied by an inventory of their contents. The articles enumerated in that report which deserve especial mention are the following: 20 bales of "army blankets, butternut color;" 1 case of assorted needles, "manufactured by Isaacs, Campbell & Co., London;" 1 case containing "about 320 gross navy buttons," and in regard to which the report says: "These buttons are of the sizes used in the United States navy. They are made of brass, and are marked on the under side 'Isaacs, Campbell & Co., 71 Jermyn street, London.' On the upper side they are stamped 'C. S. N.,' with the impress of a fowl anchor and two cannon;" 2 cases containing "about 616 gross army buttons," in regard to which the report says: "These buttons are of the kind used in the United States army. They are made of brass, marked on the under side 'Isaacs, Campbell & Co., 71 Jermyn street, London.' On the upper side some are stamped 'I.,' others 'C.,' and others 'A.;" 7 bales of "army cloth," in regard to which the report says: "This cloth is of the description used in the United States army, and is of red, yellow, dark blue, light blue, dark green, light green, and other colors;" 1 case, containing "1 dozen cavalry swords and 1 dozen cavalry bayonets, manufactured by Isaacs, Campbell & Co.;" 14 cases of "army brogans;" 1 case of "water-proof navy boots;" and 606 boxes of tin plate. The rest of the cargo, covered by the bills of lading Nos.

3 and 4, was reported to consist of envelopes, lead pencils, felt hats, woollen undershirts, men's white shirts, linen and spool thread, linen collars, woollen gloves, Congress gaiters, dry goods, scarfs, neck-ties, hair-brushes, men's drawers, and wrapping paper.

In announcing my decision in this case, just before the summer recess, I stated that the opinion of the court in full would be drawn up at a later day. In preparing that opinion, I find that, in a report of the appraisement of the whole of the cargo, made by the prize commissioners, and filed on the 14th of October, 1863, the 53 packages covered by the bills of lading Nos. 2 and 6, the contents of which are not mentioned in those bills of lading, nor in the report on the contents of the packages covered by the bills of lading Nos. 3 and 4, consisted of the following articles: 2 cases of oil of peppermint, 10 kegs of saltpetre, 15 casks of mustard, 17 casks of Epsom salts, 2 cases of calomel, 4 casks of carbonate of ammonia, 1 case of gum opium, and 2 cases of nutmegs. The marks and numbers on these 53 packages, as given in the report filed October 14, 1863, identify them with 53 of the packages specified in the marshal's report, filed April 9, 1863, the oil of peppermint being specified in the latter report as drugs, and the calomel, carbonate of ammonia, and gum opium simply as merchandise. The net weight of the saltpetre is stated in the report filed October 14, 1863, to be 1,080 pounds, and that of the coil of rope to be 554 pounds. It appears, by that report, that what are called in the report of the marshal, filed May 27, 1863, 20 bales of "army blankets, butternut color," consisted of 540 pairs of "gray army blankets," and 24 pairs of "white blankets;" that there were 360 gross of brass navy buttons, marked "C. S. N.," 10 gross of army buttons, marked "A.," 397 gross of army buttons, marked "I.," and 148 gross of army buttons, marked "C.," being, in all, 555 gross; and that there were 8 cavalry sabres, 11 sword bayonets, 992 pairs of army boots, 97 pairs of russet brogans, and 47 pairs of cavalry boots. The entire appraisement of the cargo by the prize commissioners amounted to \$184,141 99, and they appraised the vessel at \$7,500.

The depositions *in preparatorio* of James May, the master, Alexander C. T. L. Hertel, the mate, Patrick Kerns, the boatswain, and Henry Millichamp, the cook and steward, were taken on the 14th of February, 1863.

Upon the hearing of the cause, the counsel for the libellants and captors invoked into this case the proofs taken in the cases of *The Stephen Hart* and *The Gertrude*, which were on the docket of this court

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for trial at the same time with the present case. This invocation was made under the 33d standing rule of this court, in prize cases, which provides, that "when the same claimants intervene for different vessels, or for goods, wares, or merchandise captured on board different vessels, and proofs are taken in the respective causes, and the causes are on the docket for trial at the same time, the captors may, on the hearing in court, invoke, of course, in either of such causes, the proofs taken in any other of them, the claimants, after such invocation, having liberty to avail themselves also of the proofs in the cause invoked." The court permitted these invocations to be made. In the cases of *The George*, (1 Wheaton, 408,) and *The Experiment*, (8 Wheaton, 261,) the propriety of the practice of invoking testimony from the papers of other vessels in possession of the court is recognized; and, in the case of *The Vriendschap*, (4 Ch. Rob., 166,) Sir William Scott permitted the captor to invoke the deposition of the claimant, made in a former case, in which he was owner and master, upon the principle that it was proper to use the deposition, not as decisive of the case then before the court, but as evidence not improper to be taken in conjunction with that which the case afforded.

The *Stephen Hart* was a schooner, captured on the 29th of January, 1862, between the southern coast of Florida and the island of Cuba. The claimants of the whole of her cargo were Saul Isaac and Samuel Isaac, composing the firm of S. Isaac, Campbell & Co., the same persons who claim to be the owners, jointly with Begbie, of the whole of the cargo of the *Springbok*. It also appeared, in the case of *The Stephen Hart*, that the brokers who had charge of the lading of her cargo were Spyer & Haywood, the same parties who appear as brokers of the cargo in the present case, and as shippers of a part of it, and as agents for Begbie and for S. Isaac, Campbell & Co. It appeared, in the case of *The Stephen Hart*, that S. Isaac, Campbell & Co. were dealers in military goods, and that the entire cargo of that vessel, consisting of arms, munitions of war and military equipments, was laden on board of her in England, under the direction of S. Isaac, Campbell & Co., in co-operation with the agents, at London, of the "Confederate States," with the design that the cargo should run the blockade into a port of the enemy, either in the *Stephen Hart*, or in a vessel into which the cargo should be trans-shipped at some place in Cuba, and that S. Isaac, Campbell & Co. intrusted to the agent of the "Confederate States" in Cuba the determination of the question as to the mode in which the cargo should be transported into the enemy's

port. The cargo of the Stephen Hart was condemned by this court, as lawful prize, on the ground that, being contraband of war, it was sent from England, with an ostensible destination to Cuba, but with a real destination to the enemy's country, by S. Isaac, Campbell & Co.

The Gertrude was a steamer, captured on the 16th of April, 1863, in the Atlantic ocean, off one of the Bahama islands, while she was on an ostensible voyage from Nassau, N. P., to St. John's, N. B. The libel was filed against her in this court on the 23d of April, 1863, and she was condemned, with her cargo, as lawful prize, on the 21st of July, 1863. No claim was put in to either the Gertrude or her cargo. It appeared that she cleared from Greenock on the 22d of January, 1863, for Nassau and Havana. She was registered at the custom-house in London, her certificate of registry being dated January 10, 1863, in the name of Thomas Sterling Begbie, as her sole owner, and she is stated in such certificate to have been built at Glasgow on the 6th of January, 1863. The testimony in the case of The Gertrude showed that she belonged to Thomas Sterling Begbie, of London; that her cargo consisted, among other things, of hops, dry goods, drugs, leather, cotton cards, paper, 3,960 pairs of gray army blankets, 335 pairs of white blankets, linen, woollen shirts, flannel, 750 pairs of army brogans, Congress gaiters, soda ash, 500 boxes of tin plate, and 24,900 pounds of powder; that she was captured after a chase of three hours, paying no heed to four guns that were fired by her captor, but endeavoring to escape; that, when captured, she was making for the harbor of Charleston, her master knowing of its blockade, and having on board a Charleston pilot under an assumed name; that her cargo was shipped at Nassau by Henry Adderley & Co., for St. John's, N. B., by a bill of lading to order, indorsed by them in blank, and that she had on board a consignee's letter from Henry Adderley & Co., addressed to Messrs. W. & R. Wright, St. John's, N. B.

An examination of the marshal's report of the contents of the packages on board of the Springbok mentioned in the bills of lading Nos. 3 and 4, filed May 27, 1863, and of the prize commissioners' report of the contents of the packages composing the cargo of the Gertrude, filed June 1, 1863, discloses some singular facts. The report in the case of the Springbok specifies 18 bales of "army blankets, butternut color," each marked *A. in a diamond*, and numbered 544 to 548, 550, 552, and 555 to 565. The report in the case of The Gertrude shows a large number of bales of "army blankets," each marked *A. in*

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a diamond, and numbered with various numbers, scattered from 243 to 534, and then commencing to re-number again at 600. In the inventory and appraisalment of the cargo of the Springbok, before referred to, filed October 14, 1863, these 18 bales of blankets are set out as being each marked *A. in a diamond, G. C.*, and numbered 544 to 548, 550, 552, and 555 to 565, and as being "gray army blankets." In an inventory and appraisalment of the cargo of the Gertrude, made after her condemnation, and filed August 25, 1863, the bales of army blankets found on board of her are described as each marked *A. in a diamond, G. C.*, and as being numbered with various numbers, scattered between 237 and 534, there being none higher than the latter number, and as being "gray blankets." So, also, in the cargo of the Springbok is found a bale marked *A. in a diamond*, and numbered 779; while, in the cargo of the Gertrude, are found bales, each marked *A. in a diamond*, and numbered 780, 782, 784, 786, 788, 789 to 799. So, too, in the Springbok are found 9 cases, each marked *A. in a diamond*, and numbered 976 to 984, and 4 bales, each marked *A. in a diamond*, and numbered 985 to 987 and 989, all of which cases and bales are specified in the appraisalment report of October 14, 1863, by the same marks and numbers, and the 4 bales are therein stated to be "men's colored travelling shirts." In the Gertrude are found 5 bales, each marked *A. in a diamond*, and numbered 988, 990 to 992, and 996, and which, in the appraisalment report of August 25, 1863, are specified by the same marks and numbers, and described as "men's colored travelling shirts." In the Springbok are found 4 cases of men's white shirts, each marked *A. in a diamond*, and numbered 994 to 997. So, also in the Springbok are found packages, each marked *A. in a diamond, S. I. C. & Co.*, and numbered 1221 to 1234, containing spool cotton and linen thread, and a package similarly marked, and numbered 1247, containing linen collars, and 3 packages similarly marked, and numbered 1267 to 1269, containing men's hose and gloves; also, 3 packages, marked *A. in a diamond*, and numbered 1264 to 1266, containing the navy and army buttons before mentioned; also, 9 cases, similarly marked, (which, however, are specified in the report of October 14, 1863, as each marked *S. B. in a diamond, S. I. C. & Co.*) and numbered 1289, 1300 to 1304, 1306, 1322, and 1351, and containing shirts and drawers; also, 2 cases, each marked *A. in a diamond*, and numbered 1307 and 1308, containing hose; also, 6 bales of army cloth, similarly marked, and numbered 1400 to 1405; also, 1 case, similarly marked, and numbered 1406, containing cavalry

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swords and bayonets; also, 1 case, similarly marked, and numbered 1407, containing gloves, scarfs, &c.; also, 1 case, similarly marked, and numbered 1408, containing hair-brushes; also, 114 cases of Congress gaiters, similarly marked, and numbered 1309 to 1335, 1351 to 1435, 1437 and 1440; also, 14 cases, similarly marked, and numbered 1336 to 1349, containing army brogans; also, 1 case, similarly marked, and numbered 1350, containing water-proof navy boots. In the cargo of the Gertrude are found 35 cases of Congress gaiters, each marked *A. in a diamond*, and numbered 1170 to 1204; also, 10 cases of army brogans, similarly marked, and numbered 1205 to 1214; also, 1 case, containing shirts, similarly marked, and numbered 1285. On board of the Springbok is found 1 bale of brown wrapping paper, marked *A. in a diamond*, (and which is specified in the report of October 14, 1863, as marked *A. in a diamond, T. S. & Co.*) and numbered 264. On board of the Gertrude are found a large number of bales of wrapping paper and other paper, marked *A. in a diamond, T. S. & Co.*, and numbered with numbers scattered between 1 and 170. In only one instance, so far as I have observed, is the same number found on a package in each cargo—the case of needles, in the Springbok, being marked *A. in a diamond*, and numbered 998, and a case of men's colored travelling shirts, in the Gertrude, being also marked *A. in a diamond*, and numbered 998. It would appear, from this comparison of the marks and numbers on the packages in the two cargoes, that the marking and numbering of a large portion of the packages composing both cargoes were parts of one single transaction, the numbers found in one cargo not being found in the other.

The object of the invocation into the present case of the proofs in the cases of The Stephen Hart and The Gertrude is, as is claimed on the part of the libellants, to show that S. Isaac, Campbell & Co., who claim an interest in the whole of the cargo of the Springbok, were the claimants of the entire cargo of the Stephen Hart; that Thomas Sterling Begbie, who claims an interest in the whole of the cargo of the Springbok, and who appears to have chartered her from her owners for the voyage on which she was captured, was the sole owner of the Gertrude; that Spyer & Haywood, who style themselves the agents of Begbie, the charterer of the Springbok, and also the agents of S. Isaac, Campbell & Co., in respect to the cargo of the Springbok, and who are also the brokers of that cargo, and the signers of its manifest, and the shippers, by the bills of lading, of a large portion of that cargo, were the brokers of the cargo of the Stephen Hart; and that

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there is the singular correspondence, which has been pointed out, between the marks and numbers on the packages in the Springbok and those on the packages in the Gertrude. The conclusion sought to be drawn from all these circumstances is that, as it is satisfactorily established that the cargoes of both the Stephen Hart and the Gertrude were, when captured, on their way to the enemy's country, into which they were designed to be introduced by a breach of blockade, and as S. Isaac, Campbell & Co. were interested in the entire cargo of the Stephen Hart, and are interested in the entire cargo of the Springbok, and as Begbie is interested in the entire cargo of the Springbok, and as the sole owner of the Gertrude, and as the brokers of the cargo of the Springbok are the same persons who were brokers of the cargo of the Stephen Hart, and as the cargoes of the Gertrude and the Springbok appear, to a large extent, to have been marked and numbered for shipment under a single system of marking and numbering, the inference is a fair one that the cargo of the Springbok had the same destination which this court has found to have been the destination of the cargoes of the Stephen Hart and the Gertrude. This inference I regard as a very proper one, and as warranted by the proofs invoked.

In addition to the practice of invocation, it is the uniform custom of prize courts to take cognizance of the *status* of the claimants who appear before it, with a view to see whether they come with clean hands, or whether they have been before engaged in a traffic similar to that with which they are charged in the particular case. Thus, in the *Juffrouw Elbrecht*, (1 Ch. Rob., 127,) the vessel was claimed as neutral property by a person who was said, by Sir William Scott, not to be a "*novus hospes*" in the court, but to have appeared in former cases, in one of which he had sworn that a vessel was his property, when it was proved in evidence that she continued to be the property of her former enemy owner. Sir William Scott says: "The effect of this experience on our parts will be not to shut the door against him, because every case is to be examined principally by its own evidence; but, at the same time, it would be wrong to set up technical rules against the rules of common justice and reason, and to consider him as a person whose claims in this court do not require an investigation peculiarly strict." So, also, in the *Argo*, (1 Ch. Rob., 158,) Sir William Scott remarked, that the vessel was asserted to have been purchased in the enemy's country for parties claiming to be neutrals, whose transactions had appeared before the court, in other cases, not much to their advantage. He added: "Although it is not on consid-



erations of this kind that I must determine the present case, I cannot entirely overlook the conduct of parties, as far as it has judicially pressed itself on my notice." "The circumstances of a case may be such as to make it utterly incredible, although there are confident attestations in support of it. The circumstances may be highly unnatural and irreconcilable with any view of a fair transaction. The court must undoubtedly be upon its guard against running wild upon mere general presumptions, but it must judge of the common transactions of life upon the same ordinary principles on which the probity and fairness of such matters is examined in the general practice of mankind." In the *Rosalie and Betty*, (2 Ch. Rob., 343,) Sir William Scott says: "In considering this case, I am told that I am to set off without any prejudice against the parties from anything that may have appeared in former cases; that I am not to consider former circumstances, but to suppose every case a true one till the fraud is actually apparent. This is undoubtedly the duty, in a general sense, of all who are in a judicial situation; but, at the same time, they are not to shut their eyes to what is generally passing in the world—to that obvious system of covering the property of the enemy, which, as the war advances, grows notoriously more artificial. Higher prices are given for this secret and dishonorable service, and greater frauds become necessary. Old modes are exploded as fast as they are found ineffectual, and new expedients are devised to protect the unsound part better from the view of the court. Not to know these facts, as matters of frequent and not unfamiliar occurrence, would be not to know the general nature of the subject upon which the court is to decide. Not to consider them at all, would not be to do justice. The very nature of the inquiry necessarily suggests something of this kind, for the inquiry is to see whether the property does *bona fide* belong to those who are ostensibly represented to be the proprietors. It is an inquiry, therefore, which is necessarily attended with some doubt *in limine*. No reasonable man will say that the court is to look at cases in the same manner where no special reason for fraud exists, and where the enemy is driven to it by a necessity that is notorious, as the only means of getting home his property, and when such artifices are not unfrequently known to prevail; and more especially when the persons appearing as claimants have been exposed to the experience of the court, as having engaged in such a trade, and do not stand before the court with those general credentials which belong to the conduct of a pure and unimpeached neutrality. I am afraid the observation of

those who attend this court will apply these remarks to the owner of the ship. The claimant of the cargo has not, in my recollection, appeared before the court on any former occasion. I do not say that the conduct of the owner of the ship will, in general, affect the cargo; but, if the parties appear bound up together, in an intimate connexion and co-operation, in measures which a court cannot see without disapprobation, such an occurrence cannot but form a foundation for the unfavorable reception of the case of a party so connected in that transaction." In the case of *The Experiment*, (8 Wheaton, 261,) which was a case of alleged collusive capture by a privateer, Mr. Justice Story, in delivering the opinion of the court, says: "It cannot escape the attention of the court that this privateer has already been detected in a gross case of collusive capture, on the same cruise and under the same commission. This is a fact of which, sitting as a court of admiralty, we are bound to take notice; and it certainly raises a presumption of ill faith in other transactions of the same parties, which can be removed only by clear evidence of honest conduct. If the circumstances of other captures during the same cruise are such as lead to serious doubts of the fairness of their character, every presumption against them is greatly strengthened; and suspicions once justly excited in this way ought not to be easily satisfied." In *The Nancy*, (3 Ch. Rob., 122,) Sir William Scott alludes to the fact that the claimants in the case had not conducted themselves, in some cases which had come before the court, with that purity which ought to distinguish the conduct of considerable merchants. The case of *The Nancy* is cited with approbation in *Moseley on Contraband*, 99, as supporting the principle that the known character of the owners and agents of a vessel, as connected with contraband trade, is a circumstance to be considered upon the question as to whether there be so much reason to doubt the regular papers of the vessel as to warrant the court in disregarding them.

The principles laid down in the cases I have cited apply with peculiar force to the present case. I referred, in my opinion in the case of *The Stephen Hart*, to the manner in which the trade in contraband goods, and in running the blockade to the ports of the enemy, had been carried on during the present war. A large portion of that trade has been conducted through the port of Nassau, the goods being sent from England to that port, and there trans-shipped in bulk into swift steamers, such as the *Gertrude* was, in which to be carried through

the blockade. This course of trade has come to be a regular system, and when parties like S. Isaac, Campbell & Co. and Begbie are before the court, who have been engaged in carrying on that species of trade in other cases, it is impossible for the court to shut its eyes to the notorious character of the traffic, or to the unfavorable position occupied by the claimants.

I announced, in the case of *The Stephen Hart*, the leading principles of public law which apply to the present case, and also to the case of *The Peterhoff*, and discussed them at considerable length. Those principles, as established by the highest authorities in England, as well as in this country, are, that articles contraband of war, destined for the aid and use of the enemy, and on transportation by sea to the enemy's country, are liable to capture as lawful prize of war, if seized while being so transported; that, if a cargo be despatched from a neutral port with an intention, on the part of the person despatching it, that, in violation of a blockade known to exist, it shall enter a port of the enemy, it may be captured as lawful prize; that contraband articles destined, on their departure from a neutral port, to be delivered to the enemy, either by being carried directly into a port of the enemy in the vessel in which they leave the neutral port, or by being trans-shipped, at another neutral port, into another vessel, are the subject of capture; that, if the contraband articles are really intended to be delivered to the enemy at some other place than the neutral port named in the papers of the vessel as the destination of the cargo, and that neutral port is to be used merely as a port of call or of trans-shipment, and the goods are not to be delivered there for discharge and general consumption or sale there, and if, in that way, the representations contained in the papers of the vessel are false and fraudulent as to the real destination of the goods, they are liable to capture; that no principle of the law of nations; and no consideration of the rights and interests of lawful neutral commerce, requires that the mere touching at a neutral port, either for the purpose of making it a new point of departure of the vessel to a port of the enemy, or for the purpose of trans-shipping the contraband goods into another vessel, which may carry them to the destination which was intended for them when they left their port of departure, can exempt the goods from capture; that the division of a continuous transportation of contraband goods into several intermediate transportations, by means of intermediate voyages by different vessels carrying such goods, cannot cause a transportation which is, in fact, a unit, to become several

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The Springbok.

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transportations, although to effect the entire transportation of the goods requires several voyages by different vessels, each of which may, in a certain sense, and for certain purposes, be said to have its own voyage, and although each of such voyages, except the last one in the circuit, may be between neutral ports; that such a transaction cannot make any of the parts of the entire transportation of the contraband goods a lawful transportation, when the transportation would not have been lawful if it had not been thus divided; that, whether the vessel is to stop at the neutral port merely as a port of call, and then go on to the enemy's port, or whether the cargo is to be trans-shipped, at the neutral port, to another vessel, to be transported to the enemy's port, there is, in either case, an absence of all lawful neutral commerce to a neutral port, and the transportation of the contraband goods is, in either case, to be considered as a unit, from the port of lading to the port of delivery in the enemy's country; that if any part of such transportation be unlawful, it is unlawful throughout; and that the contraband goods are subject to capture, as well before arriving at the neutral port as during their transportation by sea from such neutral port to the port of the enemy. I shall not recapitulate here the authorities and the reasoning on which these principles are upheld, but shall refer to my opinion in the case of *The Stephen Hart*, for their full exposition; and I do this the more readily, as the cases of *The Stephen Hart* and *The Peterhoff*, as well as this case of *The Springbok*, have, it is understood, been carried, by appeal, to the Supreme Court of the United States.

The first inquiry is, whether, upon these principles, the cargo of the *Springbok* is liable to condemnation. The contraband goods on board of the *Springbok* are alleged to be the army blankets, the navy buttons, the army buttons, the army cloth, the cavalry swords, the bayonets, the army brogans, the navy boots, the tin plate, and the coil of rope, to say nothing of the saltpetre and the drugs, which formed a portion of the contents of the packages covered by the bills of lading Nos. 2 and 6, the contents of which packages were not embraced in the report of the marshal filed May 27, 1863, but were only disclosed in the appraisal report of the prize commissioners filed October 14, 1863. While I do not decide that all of these articles are necessarily contraband of war, it is sufficient to say that some of them are clearly so.

The well-settled rule of law is that, where contraband goods, destined for the use of the enemy, are found on board of a vessel, all other

## The Springbok.

the blockade. This course of trade has come to an end, and when parties like S. Isaac, Campbell & Co. come before the court, who have been engaged in carrying on this trade in other cases, it is impossible for the court to ignore the notorious character of the traffic, or to take any other course than to condemn it by the claimants.

I announced, in the case of The Peterhoff, and in the case of The Sarah Christina, that those principles, as established by the International Law, land, as well as in this case, the entire cargo is claimed as destined for the aid and comfort of the enemy's cause, and that articles are to be condemned as contraband of war, if seized while the vessel was at the time they were from a neutral port, and must be condemned. In the case of the Springbok, in spatching it, that the deposition of the depositions is preparatory to the seizure of the vessel.

enter a port of call, and that he does not know on what pretence the contraband articles were delivered to the vessel. Hertel, the mate, says that the seizure was made on the ground that the cargo was contraband of war. Kerns, the first mate, says that he understood that the seizure was made because the bills of lading did not show what was in some of the cases on board. Millichamp, the cook and steward, says that he understood that the vessel was captured because they had goods contraband of war on board, and that he heard no other reason given. It is very singular that Hertel and Millichamp, both of them, assign the suspicion of contraband as the alleged reason for capture, and that Kerns assigns substantially the same reason, namely, that the bills of lading did not show the contents of some of the packages, while Captain May assumes not to know what reason was assigned for the capture. It is ascertained that there were contraband goods on board, and it also appears that the contents of a very large portion of the packages covered by the bills of lading are not disclosed in the bills of lading, or in any other papers on board of the vessel, and that the only articles which are specified either in the bills of lading, the manifest, the cargo books, or any other papers found on board of the vessel, are the tea, coffee, ginger, pimento, cloves, pepper, and tin.

Captain May says that the vessel was bound to Nassau, N. P., when seized; that the voyage began at London, and would have ended at some port in the United Kingdom; that the cargo was gene-

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The *Stephen Hart*.

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The question whether or not the property laden on board of the *Stephen Hart* was being transported in the business of lawful commerce, is not to be decided by merely deciding the question as to whether the vessel was documented for, and sailing upon, a voyage from London to Cardenas. The commerce is in the destination and intended use of the property laden on board of the vessel, and not in the incidental, ancillary, and temporary voyage of the vessel, which may be but one of many carriers through which the property is to reach its true and original destination. If this were not the rule of the prize law, a very wide door would be opened for fraud and evasion. A cargo of contraband goods, really intended for the enemy, might be carried to Cardenas in a neutral vessel sailing from England with papers which, upon their face, import merely a voyage of the vessel to Cardenas, while, in fact, her cargo, when it left England, was destined by its owners to be delivered to the enemy by being trans-shipped at Cardenas into a swifter vessel. And such, indeed, has been the course of proceeding in many cases during the present war.

Nor is the unlawfulness of the transportation of contraband goods determined by deciding the question as to whether their immediate destination was to a port of the enemy. Thus it is held that, in order to constitute the unlawfulness of the transportation of contraband goods, it is not necessary that the immediate destination of the vessel and cargo should be to an enemy's country or port; for, if the goods are contraband, and destined to the direct use of the enemy's army or navy, the transportation is illegal. If an enemy's fleet be lying, in time of war, in a neutral port, and a neutral vessel should carry contraband goods to that port, not intended for sale in the neutral market, but destined to the exclusive supply of the hostile forces, such conduct would be a direct interposition in the war, by furnishing essential aid in its prosecution, and would be a departure from the duties of neutrality. (Halleck on International Law, chapter 24, section 11, page 576.) The proper test to be applied is, whether the contraband goods are intended for sale or consumption in the neutral market, or whether the direct and intended object of their transportation is to supply the enemy with them. To justify the capture, it is enough that the immediate object of the voyage is to supply the enemy, and that the contraband property is certainly destined to his immediate use. While it is true that goods destined for the use of a neutral country can never be deemed contraband, whatever be their character, and however well adapted they may be to the purposes of war, yet, if they are destined for the direct use of the enemy's army or navy, they are not exempt

the blockade. This course of trade has come to be a regular system, and when parties like S. Isaac, Campbell & Co. and Begbie are before the court, who have been engaged in carrying on that species of trade in other cases, it is impossible for the court to shut its eyes to the notorious character of the traffic, or to the unfavorable position occupied by the claimants.

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The Springbok.

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transportations, although to effect the entire transportation of the goods requires several voyages by different vessels, each of which may, in a certain sense, and for certain purposes, be said to have its own voyage, and although each of such voyages, except the last one in the circuit, may be between neutral ports; that such a transaction cannot make any of the parts of the entire transportation of the contraband goods a lawful transportation, when the transportation would not have been lawful if it had not been thus divided; that, whether the vessel is to stop at the neutral port merely as a port of call, and then go on to the enemy's port, or whether the cargo is to be trans-shipped, at the neutral port, to another vessel, to be transported to the enemy's port, there is, in either case, an absence of all lawful neutral commerce to a neutral port, and the transportation of the contraband goods is, in either case, to be considered as a unit, from the port of lading to the port of delivery in the enemy's country; that if any part of such transportation be unlawful, it is unlawful throughout; and that the contraband goods are subject to capture, as well before arriving at the neutral port as during their transportation by sea from such neutral port to the port of the enemy. I shall not recapitulate here the authorities and the reasoning on which these principles are upheld, but shall refer to my opinion in the case of *The Stephen Hart*, for their full exposition; and I do this the more readily, as the cases of *The Stephen Hart* and *The Peterhoff*, as well as this case of *The Springbok*, have, it is understood, been carried, by appeal, to the Supreme Court of the United States.

The first inquiry is, whether, upon these principles, the cargo of the *Springbok* is liable to condemnation. The contraband goods on board of the *Springbok* are alleged to be the army blankets, the navy buttons, the army buttons, the army cloth, the cavalry swords, the bayonets, the army brogans, the navy boots, the tin plate, and the coil of rope, to say nothing of the saltpetre and the drugs, which formed a portion of the contents of the packages covered by the bills of lading Nos. 2 and 6, the contents of which packages were not embraced in the report of the marshal filed May 27, 1863, but were only disclosed in the appraisal report of the prize commissioners filed October 14, 1863. While I do not decide that all of these articles are necessarily contraband of war, it is sufficient to say that some of them are clearly so.

The well-settled rule of law is that, where contraband goods, destined for the use of the enemy, are found on board of a vessel, all other



goods on board of that vessel belonging to the owner of the contraband articles, even those goods which are innocent, must share the fate of the contraband goods. (Halleck on International Law, chap. 24, sec. 6, p. 573.) The penalty of contraband extends to all the property of the same owner, involved in the same unlawful transaction; and, therefore, if articles which are contraband, and are going to the enemy, are on board of the same vessel with articles which are not contraband, and all the articles belong to the same owner, all will be alike condemned, the innocent articles being affected with the contagion of the contraband articles. (3 Phillimore on International Law, sec. 277; 2 Wildman's International Law, 217; The Sarah Christina, 1 Ch. Rob., 237.) As, in the present case, the entire cargo is claimed by the same owners, if the contraband articles are to be condemned as having been on their way to the enemy at the time they were seized, all the rest of the cargo must be condemned.

I now proceed to an examination of the depositions *in preparatorio* taken in the present case.

Captain May says that he does not know on what pretence the capture was made. Hertel, the mate, says that the seizure was made on the supposition that the cargo was contraband of war. Kerns, the boatswain, says that he understood that the seizure was made because the bills of lading did not show what was in some of the cases on board. Millichamp, the cook and steward, says that he understood they were captured because they had goods contraband of war on board, and that he heard no other reason given. It is very singular that Hertel and Millichamp, both of them, assign the suspicion of contraband as the alleged reason for capture, and that Kerns assigns substantially the same reason, namely, that the bills of lading did not show the contents of some of the packages, while Captain May assumes not to know what reason was assigned for the capture. It is ascertained that there were contraband goods on board, and it also appears that the contents of a very large portion of the packages covered by the bills of lading are not disclosed in the bills of lading, or in any other papers on board of the vessel, and that the only articles which are specified either in the bills of lading, the manifest, the cargo books, or any other papers found on board of the vessel, are the tea, coffee, ginger, pimento, cloves, pepper, and tin.

Captain May says that the vessel was bound to Nassau, N. P., when seized; that the voyage began at London, and would have ended at some port in the United Kingdom; that the cargo was gene-

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The Springbok.

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sal merchandise; and that he is not aware that she had any goods contraband of war on board. That she had contraband goods on board, and what they were, we have already seen. It is a principle of prize law, that a master cannot be permitted to aver his ignorance of the contents of contraband packages on board of his vessel; and that he is bound, in time of war, to know the contents of his cargo. (The *Oster Risoer*, 4 Ch. Rob., 199.) Hertel says that the voyage began at London, and was to have ended, according to the shipping articles, at any port in the United Kingdom of England or Ireland, or any port on the continent of Europe between Brest and the river Elbe; that the voyage was to Nassau; that he does not know where they intended to go after leaving Nassau; that they intended to discharge their cargo at that place; that it was a general cargo; that he has no knowledge, information, or belief as to the contents of the packages; that he took them all on board and gave receipts for them; and that, to the best of his knowledge, information, and belief, there were on board no goods contraband of war. Kern says that the vessel was bound to Nassau with a general cargo, the contents of which he does not know, and that he does not know that she had on board any goods contraband of war. Millichamp says that the voyage was from London to Nassau, and thence to any port in the West Indies, North America, or the United States, and thence back to any port in the United Kingdom, according to the shipping articles which he signed; that the cargo was all on board when he joined the vessel, except two cases or boxes, which were put on board the day before they sailed; and that he knows nothing concerning the cargo, or whether or not she had on board anything contraband of war. The two cases referred to by Millichamp are undoubtedly the two packages mentioned in the bill of lading No. 3, and which are the sole contents of that bill, one of them being the bale of brown wrapping paper, and the other being one of the two cases containing the army buttons. Bill No. 3 is dated December 8, while bills Nos. 2 and 6 are dated December 6, and bills Nos. 4 and 5 have no date.

Captain May says that the vessel was consigned to B. W. Hart, esq., Nassau, and the cargo to the order of the charterers, indorsed on the bills of lading; that the goods were to be delivered at Nassau for account and risk of Begbie & Co., of London, the charterers; and that he does not know to whom the goods would belong, if restored. Hertel says that the cargo was shipped by Spyer & Haywood, of London, consigned to B. W. Hart, of Nassau; and that it was to have

been delivered at Nassau, but he cannot say for whose real account, risk, or benefit.

Captain May says that there were three sets of either three or four bills of lading of the goods on board of the vessel; and that there were no false bills of lading, nor any signed other than those on board when she was taken. He also says that there were no papers on board showing the ownership of the cargo; and that the charter party for the voyage was signed by Begbie & Co.

The master and all on board knew of the blockade of the ports of the enemy.

I am entirely satisfied, from all the evidence in the case, that the cargo of the Springbok was intended to be delivered in the enemy's country, by trans-shipment at Nassau into a vessel in which it should be carried through the blockade, and that such was the intended destination of the cargo on its departure from England. The papers found on board of the vessel, so far as they represent Nassau as the ultimate destination of the cargo, were false and simulated. There was no *bona fide* intention of landing the cargo at Nassau for sale or consumption there, so that it might be incorporated at Nassau into the common stock in that market; but, if it was to be landed there at all, it was only to be so landed for the purpose of being trans shipped, in bulk, into another vessel, in pursuance of the original destination of the cargo to the enemy's country. The port of Nassau was to be used only as a port of trans-shipment of the cargo. In the case of *The Thomyris*, (Edwards's Adm. Rep., 17,) Sir William Scott says: "It is a clear and settled principle, that the mere trans-shipment of a cargo at an intermediate port will not break the continuity of the voyage, which can only be effected by a previous actual incorporation into the common stock of the country where the trans-shipment takes place. If there was nothing more than a trans-shipment of the cargo from one vessel to another, that will not alter the transaction in any respect, and it must still be considered as the same continuous voyage to the port where the cargo was ultimately to be delivered." Many authorities, to the same effect, were cited by me in the case of *The Stephen Hart*. The case of *The Joseph* (8 Cranch, 451) may also be referred to.

The absence from the bills of lading of all mention of the contents of any of the packages composing the cargo, except the tea, coffee, ginger, pimento, cloves, and pepper, and the fact that the manifest makes no mention of the contents of any of the packages, leads to the

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conclusion that, if the master did not in fact know what were the contents of the packages, his ignorance was a studied ignorance. But the more reasonable conclusion, in view of his declared want of information as to the cause of his capture, while the other witnesses frankly declare the cause to have been the suspected presence of contraband goods, or the defective character of the bills of lading, is that his ignorance is affected and not real.

The circumstance that all the bills of lading say that the freight is to be paid "as per charter-party," shows that the charterer of the vessel, Begbie, must have been interested in the whole of the cargo. The inference that there was a single ownership of the whole of the cargo, although part of it was shipped in the name of Moses Brothers, and the rest of it in the name, some of Spyer & Haywood, and some of Spyer & Haywood, as agents, is deducible from the fact that Spyer & Haywood, as agents for the charterer, instructed Captain May, on his arrival at Nassau, to report to Mr. Hart for orders as to the delivery of the cargo; and from the further fact, that Spyer & Haywood, as agents for S. Isaac, Campbell & Co., enclosed in a letter to B. W. Hart the bills of lading Nos. 5 and 6, which comprise the entire contents of the cargo, except the two packages mentioned in bill No. 3, being the bale of brown paper and one case of the army buttons; and from the further fact, that Spyer & Haywood signed the indorsement on the charter-party, and also, as brokers, signed the manifest of the entire cargo. There was, therefore, a single ownership for the entire cargo, both contraband and non-contraband; and it is fair to infer, from all the evidence, that there must have been a single destination for the whole of the cargo. If, therefore, any particular destination can, with certainty, be affixed to any portion of the cargo, the same destination must, on all the evidence, be ascribed to the whole of it.

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have worked no injury, if those contraband articles were not on their way to the enemy of the United States. What, then, is the proper inference to be drawn from the absence of the invoices? Most certainly, that the contraband articles which were in fact on board, and whose existence was not disclosed by the bills of lading, the manifest, or the cargo books, but whose presence would have been disclosed by true and proper invoices, were on board for some unlawful purpose and upon some unlawful destination. Such purpose could, on all the evidence in the case, only have been to supply the enemy of the United States, and such destination could only have been the country of the enemy. Captain May testifies to the existence of invoices, and says that he believes that invoices and duplicate bills of lading were to be sent to Nassau by mail steamer. Spyer & Haywood, as agents for S. Isaac, Campbell & Co., enclosed to B. W. Hart, of Nassau, in their letter to him of December 8, 1862, "under instructions from Messrs. S. Isaac, Campbell & Co.," "bills of lading for goods shipped per Springbok," but they did not enclose in that letter invoices of the goods covered by the bills of lading. Why should they not have done so, if the goods were, in the way of lawful commerce, to be landed at Nassau for sale or consumption there, and to be incorporated there into the common stock of that market? What other motive could there have been for sending the invoices by mail, as suggested by the master, while the bills of lading were sent by the vessel herself, except to conceal from the officers of any cruiser of the United States by whom the papers of the vessel should be examined on her voyage, all knowledge that contraband articles were on board? And what motive could there be for concealing that knowledge if, in fact, those contraband articles were not destined for the enemy of the United States, but were destined for use or sale at the neutral port of Nassau? The effect of the dissembling of contraband goods in the papers of a vessel is commented upon by Sir William Scott in *The Richmond*, (5 Ch. Rob., 290,) and the absence from on board of a vessel in time of war of invoices of her cargo is laid down by all the authorities as being a suspicious circumstance, as affecting the question of the honesty of the commerce. (1 Kent's Commentaries, 157; Halleck on International Law, chap. 25, sec. 25, p. 622.) And, in some of the treaties of the United States with foreign countries, it has been provided that, in time of war, the vessels of both nations, being laden, must be provided, among other papers, "with certificates containing the several particulars of the cargo," "that so it may be

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hidden or contraband goods be on board the  
 No. 6 Wheaton, 1; Treaty of 1795 with  
 at Large, 148; Convention of 1800  
 The foundation of this rule of law,  
 whether embodied in treaty  
 a vessel should be fur-  
 mulars of her cargo, espe-  
 the vessel is documented for a  
 ports of one of the belligerents,  
 extensively used as a mere port of call  
 vessels and cargoes bound to ports of the  
 dates, and where, too, the parties claiming to  
 been engaged in previous adventures connected  
 blockade, or introducing cargoes of contraband goods  
 any's country.

acts, that the original bills of lading Nos. 5 and 6, made out to  
 er," are indorsed in blank; that the bill of lading No. 2, which  
 is a duplicate of No. 6, and is a "captain's copy," is indorsed in blank;  
 that the very brief letter of instructions to Captain May from Spyer &  
 Haywood, as "agents for the charterer," dated December 8, 1862,  
 simply directs him to proceed to Nassau, N. P., "and, on arrival, report  
 yourself to Mr. B. W. Hart there, who will give you orders as to the  
 delivery of your cargo, and any further information you may require;"  
 and that Spyer & Haywood, as agents for S. Isaac, Campbell & Co.,  
 sent to Hart the bills of lading for substantially the whole of the cargo,  
 justify the conclusion that the cargo in bulk, as a whole, was put un-  
 der the orders of Mr. Hart, not to be sold or used at Nassau, but to be  
 forwarded by transshipment to some other destination. What was that  
 destination? It is clearly indicated by the initials "C. S. N." stamped  
 upon the 50,000 navy buttons, those initials standing for the words  
 "Confederate States Navy," and by the initials "I.," "C.," and "A.,"  
 stamped upon the 80,000 army buttons, which severally represent the  
 words, "Infantry," "Cavalry," and "Artillery." The destination of  
 those navy buttons was unquestionably the country of the enemy of  
 the United States, which enemy styles itself "The Confederate States  
 of America." The navy buttons must have been destined for the use  
 of the navy of the enemy, and the army buttons were for the use of its  
 army. Such destination was intended by S. Isaac, Campbell & Co.,  
 for the buttons are all of them stamped with their name and place of  
 business in London. Such also was the only appropriate destination

been delivered at Nassau, but he cannot say for whose real account, risk, or benefit.

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receipt for harbor duties at Ramsgate, the certificate from the searcher's office of the London custom-house, and the victualling bill, speak of the voyage as one from London to *Cuba*. The telegram of the 23d of November, 1861, from S. Isaac, Campbell & Co., to Lloyd's agent at Deal, speaks of the schooner as bound for Cardenas. The title-page of the ordinary log-book speaks of the voyage as one from London to Cardenas, Cuba. The label on the outside of that log-book has the blank for the place at which the voyage commenced filled up with the words, "London, England," but the blank for the place of destination is not filled up at all. The blanks at the tops of the pages are filled up on only one page, although sixty-two pages are occupied with entries of the progress of the voyage, from the 19th of November, 1861, to and including noon of the 27th of January, 1862. The page referred to has, at the top, the voyage entered as "from London towards *Cuba*." On the first page, under date of November 19, 1861, there is an entry that the pilot "took charge of the schooner Stephen Hart on a voyage to *Cuba*." The title-page of the official log-book speaks of the voyage as being one to "*Cuba* and Sierra Leone." None of the letters found on board are addressed to any person at Cardenas. But there was found on board a letter from Saul Isaac to Mr. Crawford, the British consul general at Havana, asking his "assistance and advice for Captain Dyett, of the schooner Stephen Hart, should he need it during his stay at Havannah."

The letter of instructions to Captain Dyett from S. Isaac, Campbell & Co., produced by Captain Dyett on his examination, directs him to proceed "to Cardenas, Cuba," and to report, on his arrival there, "to Charles J. Helm, esq're, to whom you will consign yourself and vessel, and from whom you will receive all orders for your future actions with reference to the schooner and cargo, and you will be pleased to implicitly obey all orders given by Charles J. Helm, esq're. \* \*

\* \* \* Mr. Helm may require the schooner for use at Havannah. Should he do so, you will at once make the best arrangements for the immediate return to England of yourself and crew. Should, however, any one wish to remain in the employ of Mr. Helm, we have no objection to his doing so. In case Mr. Helm has no use for the vessel after discharging the cargo, you will receive full instructions from Messrs. Isaac, Campbell & Co., by mail leaving this on the 2d proximo, for proceeding to the west coast of Africa." The letter then directs Captain Dyett to deliver, without delay, on his arrival, the letters which he has for Mr. Helm and Mr. Crawford, and also, imme-

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diately on his arrival at Cardenas, to telegraph "to Cahuzac Brothers, Havannah, who will, on receipt of message, communicate with you." The letter to Mr. Helm, thus referred to, was also produced by Captain Dyett on his examination, and is from Saul Isaac, and is addressed "Charles J. Helm, esq're, care of J. Crawford, esq're, Havannah." It says: "The bearer of this is Captain Dyett, of the schooner Stephen Hart, for whom I ask the favor of your good offices. Should he require assistance or advice during his stay at Havannah, he will hand you his instructions from my house to read, and I feel assured that you will in all matters find him a good man."

It is very manifest, from these documents, that Mr. Helm, Mr. Crawford, and Cahuzac Brothers, the only parties named as having any concern in Cuba with the vessel or her cargo, were all of them to be found at Havana, and none of them at Cardenas, and that no person in Cardenas was consignee either of the vessel or the cargo; that it was contemplated that the vessel should go to Havana, if Mr Helm required it, and be given up for use to Mr. Helm, at Havana, if he required it; that Captain Dyett was to obey the orders of Helm in all his actions with reference to the vessel and her cargo; that Captain Dyett and his crew were authorized to remain in the employ of Mr. Helm, if any of them desired to do so; and that Mr. Helm was to have the control of the discharging of the cargo of the vessel, and the right to use the vessel after the cargo was discharged. It is also to be noted, that these instructions to Captain Dyett were not from Harris, the alleged owner of the vessel, but were from S. Isaac, Campbell & Co., who claim to be the owners of the whole of her cargo. No instructions whatever from Harris to Captain Dyett were found on board, nor is it pretended that he had any from Harris. Harris appears to have given up the entire control of the vessel and of her movements to S. Isaac, Campbell & Co.; and, for these reasons, independently of all other considerations, the owner of the vessel must be held to have involved her in any illegality of which S. Isaac, Campbell & Co. or Captain Dyett have been guilty in respect to the cargo of the vessel, especially in view of the facts which Captain Dyett states, that he was put in command of the vessel by that firm, and that there was no charter-party for the voyage. (*Jecker v. Montgomery*, 18 Howard, 110, 119.)

The conclusion is irresistible, from the contents of the three letters referred to, that there was no intention whatever of discharging the

cargo of the vessel at Cardenas; and that, if discharged at all in Cuba, it was to be discharged at Havana. As no manifest, bills of lading, or invoices, or any other papers, (except the letter of instructions to Captain Dyett,) giving any information as to the character of the cargo, or its owners, or its consignees, were found on board of the vessel, the conviction is forced on the mind that the cargo had a single ownership and a single destination; that that ownership was one represented by Mr. Helm as its agent; and that that destination was to the place where his principals resided, and where they would derive the most benefit from the cargo.

Who was Charles J. Helm? Captain Dyett speaks of him as "Major Helm," and says that he resides in Havana. Chadwick, on his second examination, says that Helm was the agent for the "Confederate States," in Cuba. This being so, it may very well be inferred that this cargo of arms and munitions of war was destined to be carried into the enemy's country, as we find the vessel and her cargo placed, by the orders of S. Isaac, Campbell & Co., within the entire control, and subject to the orders of Helm. But, independently of this, the evidence is irresistible, that the cargo was destined for the enemy's country.

The test oaths, both of Harris and of Samuel Isaac, when examined carefully, fall far short of a frank and clear statement of an innocent destination for the vessel and cargo. The test oath of Harris says that the true and only destination of the vessel, *with the cargo*, was Cardenas, "where the same was to be delivered." This oath would be satisfied by a delivery of the cargo in bulk at Cardenas to Helm, and its transshipment there to another vessel, to be carried to a port of the enemy, in pursuance of such an original destination. It does not state that the destination of the cargo was not to a port of the enemy. And it states, in very suspicious language, that it was not intended that the vessel should enter, or attempt to enter, *any port of the United States*, but it does not state that it was not intended that the vessel or her cargo should enter, or attempt to enter, any port of the enemy of the United States, or any port blockaded by the naval forces of the United States. In all these particulars the test oath of Samuel Isaac to the claim for the cargo holds the same suspicious language, and is wanting in the same averments. The court searches in vain through these test oaths to find those full and honest allegations which should characterize the test oath to a claim made by a neutral really engaged in lawful and innocent commerce.

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I shall now review the evidence in the case, in order to see to what conclusion it leads. Captain Dyett says that he does not remember seeing any "southern flag" on board of his vessel, although he says that if the "southern flag" were put before him he should not know it. He admits, however, that, besides the English colors, under which the vessel sailed, and the American flag, "that is, the stars and stripes," there were other flags in the vessel's bag. Chadwick says that they had the "confederate" flag on board, and cut up the American flag to make a burgee of it. A "burgee" is defined by lexicographers to be "a distinguishing flag or pennant." Leisk says that the vessel had an American flag on board, and another flag that looked similar to the American flag. Nellman says that she had the American ensign, which was cut up on the voyage to make a burgee of, and also "a flag of the Confederate States of America;" that he saw that flag a few days before the capture, in the sail cabin, in a bag with the burgee; and that, on the day of the capture, he found the burgee on the floor in the main cabin, and made thorough search for "the confederate flag," but could not find it. Allan says that they had the American colors on board, and another flag with stars and stripes, "but not as many stars as the old American flag;" and that he does not know whether that was the "confederate flag" or not, as he never saw one to know it, unless that was one. Chadwick, on his re-examination, says that after the capture of the vessel, and while the captors were in charge, he took this "confederate flag" from where it was hid in his clothes bag, and threw it overboard; and that this flag was intended to be displayed in connexion with a peculiar one, called the "Isle of Man's flag," or signal, "which was adopted by the southern States as a signal for a friendly vessel wishing to enter, and which should be protected, as far as possible, by them." This signal flag was probably the burgee of which the witnesses speak.

Captain Dyett says that the schooner was captured about eighty-two miles from Point de Yeacos, in Cuba. Chadwick says that the capture took place between Cuba and Key West, near the coast of Florida. Nellman and Allan say that the capture took place about thirty miles from Key West. Captain Dyett says that the capture took place about twenty-five miles from Key West, and about eighty-two miles from Cardenas.

Captain Dyett says that the vessel was bound for Cardenas; that the contents of her cargo were unknown to him, except that he saw some cases marked "long Enfield," which he supposed contained "long

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Enfield guns," and he thinks he saw a few bales marked "socks;" and that at Erith, below London, on the Thames, some packages were taken in stamped "ball cartridges;" but, he says "she had no goods on board which were contraband of war, or otherwise prohibited by law." He also says that he cannot state any thing further in regard to the real and true property and destination of the vessel and cargo, except that, after he had discharged his cargo, he was to proceed to Sierra Leone, as stated in his letter of instructions. Chadwick, on his first examination, says that they were bound to Cardenas; that the cargo consisted of powder and munitions of war; that he understood, from the Captain and the shipping articles, that they were bound to Cardenas, and from there to Sierra Leone; and that he knows nothing beyond that. Leisk says that the vessel was bound to Cardenas and Sierra Leone; that he knew that her cargo, consisting of arms, powder, and soldiers' equipments, was contraband of war; and that he knows nothing about the destination of the vessel and cargo, except that they were bound to Cardenas. Nellman says that the vessel was bound to Cuba, Sierra Leone, or the West Indies, or some port in North or South America; and that he does not know to which of those several ports or places they were bound first. In this particular he confirms the very ambiguous and alternative language in the shipping articles. He also says that the cargo consisted of Enfield rifles, powder, cartridges, shot, shell, soldiers' accoutrements, such as knapsacks, belts, and pouches, and some heavy boxes, which he thinks contained small cannon; and that the lading consisted entirely of warlike stores and articles. He thus manifests a knowledge of the cargo, which is in striking contrast with Captain Dyett's ignorance. Nellman says that he thinks that these goods are contraband of war. Captain Dyett, however, says that Enfield rifles and ball cartridges are not contraband of war. Allan says that the vessel was bound to Cuba; and that the captain said he was going to Cardenas, and from there to the coast of Africa. As to the cargo, Allan says that he had seen boxes marked "long Enfields," which he took to be guns, and had heard there was powder, and had seen bales of blankets and other military equipments, and believes that she had a general cargo of arms and munitions of war.

Captain Dyett says that he does not know who owns the cargo, but his impression is that it belongs to Isaac, Campbell & Co.; that he does not know who were the laders of the cargo, or for whose risk and account the goods were, or what interest Major Helm had in them; and that he does not know to whom they would belong if restored and



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delivered at their destined port. Chadwick says that he heard in London that Isaac, Campbell & Co. owned the cargo. Nellman says that he believes the cargo is owned "in the Confederate States of America;" that he heard Chadwick say so; that he never heard any thing further concerning the cargo and its owners, except that Mr. Chadwick told him that the cargo was going to some place in "the Confederate States," and professed to know all about it. He also says that Mr. Hughes, who, he believes, is an agent for "the Confederate States," put the cargo on board, and was the lader thereof, and seemed to be the principal man, and had the most to say about the vessel and cargo; that the goods were to be delivered in the southern States, at some port therein, and he thinks for the account or benefit of some person in those States; and that he believes, from what he heard on board the vessel, that the cargo was destined for some port in the southern States, either to be carried there in that vessel, or to be trans-shipped and put in another vessel for the same purpose. He also says that he thinks that the vessel was in reality bound for Cuba, and that, after arriving there she would receive instructions as to what particular port or place she would go to in the southern States, or as to whether the cargo should be trans-shipped and put on board another vessel; and that Chadwick told him that a steamer would receive the cargo at Cuba very probably, and would carry it thence to some southern port.

Captain Dyett says that he signed four bills of lading for the cargo, which were prepared by the broker and laid before him to sign; that he signed them without reading them, and does not know their contents; and that he had no bill of lading on board when he sailed, or at any time before his capture. He also says that he signed a manifest before the collector of London, and left it at the office of the brokers, Speyer & Haywood, in London, and has not seen it since; that the manifest was in the usual form, and made from the bills of lading; and that the bills of lading and manifest were to be forwarded to him at Cardenas. He also says that there were no invoices on board of the vessel.

Captain Dyett, on the capture of the vessel, did not give up to the prize-master the letter of instructions from S. Isaac, Campbell & Co. to him, or the letter from Saul Isaac to Charles J. Helm, of November 19, 1861. He only produced them on his examination *in preparatorio*, after his arrival at New York, in answer to the searching inquiries of the standing interrogatories. He says that he did not give up those letters to the prize-master, because he did not know that he was bound

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to give them up. Yet he says that he gave to the prize-master his ship's log-book, his official log-book, and his desk, with all the papers therein, being his private papers, and in no way relating to the vessel; and among the papers which he so gave up is found the comparatively unimportant letter from Saul Isaac to the British consul at Havana, and the telegrams and official papers of the vessel, which were calculated, on their face, to show a fair and honest voyage from London to Cuba. The two letters which he did withhold, namely, the instructions to himself and the letter to Helm, were the only documents on board which in any way connect Mr. Helm with this vessel and her cargo. This withholding or temporary suppression of those two letters, whose character and contents I have already commented upon, is one of those circumstances which is always regarded with suspicion, particularly where the suppression is made by a master. I shall have occasion to refer to this point hereafter, in connexion with the attempted suppression of important papers by Chadwick. That the suppression of these letters by Captain Dyett was premeditated, is shown by the testimony of Nellman, who says that Captain Dyett had a letter with him directed to some one, and that he heard him and Chadwick talk about it an hour or so before the capture, just when the capturing vessel was firing her first shot.

Chadwick says that he had some private letters from his wife and friends, which he gave to Leisk, the cook, to take care of, and that Leisk gave them up to some of the capturing officers. Leisk says that he had some papers belonging to Chadwick which he, Leisk, put into a tea-pot, where they were found by the searching officer; and that they were put there by the orders of Chadwick, to keep them out of sight. Nellman says that Chadwick, a few minutes before the capture, gave some papers to Leisk, with directions to put them in a tea-pot in the galley, for the purpose of concealing them, but that they were found by the United States officers. Allan says that he saw a bunch of papers taken out of the tea-pot by the boarding officer, and that, when they were found, the officer asked Leisk what they were, and Leisk said he thought it was tea.

On his re-examination Leisk says that some papers were given to him by Captain Dyett on the evening of the day they were captured, which Captain Dyett had put at the foot of his berth. Leisk says: "He told me, if he sent for these papers, I should know where to find them. He then went on board the Supply. When he returned, I

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asked him if he wanted those papers. He said he had already got them. This conversation was between us, there being no other person within hearing. We were in his state-room at the time, with the door closed." We have no explanation from any witness as to what those papers were. As to the papers which Leisk received from Chadwick and put into the tea-pot, where they were found by the boarding-officer, Leisk says, on his re-examination: "When the first officer handed me those papers he seemed anxious and uneasy, and, when he returned to the schooner to get his clothes, the first thing he said to me was, 'Have you got those papers?' I told him they were found by the officer. He then said, 'Why, in hell, did you not destroy them?' And likewise, 'By God, I am done!'"

Three of the papers which were concealed in the tea-pot, and which Chadwick speaks of as private letters, are letters to Chadwick containing some very important matter. One of them is dated at Bristol, England, October 29, 1861, and is addressed to Chadwick by a person who signs himself "R. H. Leonard, ship Alexander, Confederate States." Leonard expresses his pleasure that he is able to furnish Chadwick with "the book required," without price. He refers to it as a book which Chadwick had written for; says that it belongs to him, Leonard, and that, if it were worth £50, he would willingly give it to an enterprise of Chadwick's, and hopes it may be of valuable service to him. This book is the copy of the United States Coast Survey that was found on board of the vessel, containing charts, as has been seen, for entering very many of the blockaded ports of the enemy. In his testimony, given on his re-examination, Chadwick refers particularly to this book of charts as one which he recommended to his employers to purchase, and which they told him to purchase at any price. He says that he obtained one, which was presented to him by "R. H. Leonard, the mate of the ship Alexander, then lying in Bristol." These employers, Chadwick states, in his deposition on re-examination, to have been Mr. Hughes, "the commercial confederate agent for purchasing arms and ammunition for, and shipping the same to, the Confederate States," "William L. Yancey, of the United States," a South Carolina captain, named Connor, and Mr. Saul Isaac.

In the same letter, Leonard says: "Captain Johnson will mark out the chart; also the route, with some information; also write a letter which he will wish you to deliver or forward. Mrs. Bain will also have a letter for you to take, and forward to Virginia, if you arrive safe. I hope you may be successful. If so, report the old Alexander



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laying up at Bristol, with the palmetto tree constantly flying, and that her captain and officers are ready to aid the South in any enterprise. Tommy, I will not ask you to disclose the secret of your voyage. Be whatever it may, I believe it is true to the south. My heart and well wishes are with you, hoping you may be successful, and I may hear of the consequences. If that book prove serviceable to you, it will afford me more pleasure than its weight in gold in return. \* \* \*

\* I shall send the book by express this evening. I wish you to write me two or three mails before you put to sea, as Mrs. Bain will have some other letters to send. If you should fail, destroy."

Chadwick, on his re-examination, states that he received a letter from Captain Johnson, of the ship Naomi, of Charleston, S. C., giving him a description of the entrance to Charleston, and also received from him letters for his wife, and for other persons residing in the "Confederate States." In confirmation of this, we find that another of the three letters, being one dated at Bristol, England, October 29, 1861, and signed "John Johnson, ship Naomi," and addressed to "Mr. Benjamin H. Chadwick, schooner Stephen Hart, Surrey Canal, London," says: "Mr. Leonard, chief officer of the ship Alexander, and I had some private conversation this morning concerning *some things*, which I need not now repeat." Johnson then proceeds to give specific directions as to the mode of entering the harbor of Charleston, and adds: The chart of Charleston harbor, in the book called the U. S. Coast Survey, will be your best guide." He also says: "Enclosed is a letter, and I beg that you will, in case you succeed in safely reaching any southern port, forward the same to its destination. At the same time, do not let its encumbrance in any way interfere with your enterprise. Destroy it, if need be; but, if it could be managed to forward it safe to my wife, I should feel very grateful towards you for your kindness. I hope and trust that you will succeed in your undertaking. Observe secrecy by all means, and I can assure you that no information as regards the Stephen Hart's whereabouts or movements shall be gained from me by any one here or elsewhere. \* \* \* May the God of Justice guide you in safety to your port of destination is the fervent wish of one who loves the south, its institutions, and its people.

The remaining one of the three letters is from Leonard, and is addressed "to Mr. B. H. Chadwick, *alias* Tommy, 1st officer, Stephen Hart," and is written at Bristol, England, but without date. It says, among other things, "Give me the particulars of your voyage, what your cargo consists of, and if you have got any guns on board."

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The suppression by Captain Dyett, until his examination *in preparatio*, of the letter of instructions to him from S. Isaac, Campbell & Co., and of the letter from Saul Isaac to Helm, and the attempt by Chadwick to conceal the letters from Leonard and Captain Johnson, are circumstances of great importance, as tending to show the illicit and fraudulent character of the entire transaction connected with this vessel and her cargo, and that Captain Dyett and Chadwick were concerned in carrying out the unlawful purpose, and endeavored to promote that end by attempting to conceal the evidence which they had in their possession. The spoliation of papers is a strong circumstance of suspicion. (1 Kent's Comm., 157.) It is not, however, either in England or in the United States, held to furnish, of itself, sufficient ground for condemnation, but is a circumstance open to explanation. (The Hunter, 1 Dodson, 480; The Pizarro, 2 Wheaton, 227.) But, if the explanation be not prompt and frank, or be weak or futile; if the cause labors under heavy suspicions, or if there be a vehement presumption of bad faith or gross prevarication, it is ground for the denial of further proof, and the condemnation ensues from defects in the evidence, which the party is not permitted to supply. (1 Kent's Comm., 158; The Pizarro, 2 Wheaton, 227; Bernardi, v. Motteaux, Doug., 554, 559, 560.) In the case of the Two Brothers, (1 Ch. Rob., 131,) the master had burned some letters, before capture, which he said were only private letters. Sir William Scott says, in commenting upon that circumstance: "No rule can be better known than that neutral masters are not at liberty to destroy papers, or, if they do, that they will not be permitted to explain away such suppression by saying 'they were only private letters.' In all cases it must be considered as a proof of *mala fides*; and, where that appears, it is a universal rule to presume the worst against those who are convicted of it. It will always be supposed that such letters relate to the ship or cargo, and that it was of material consequence to some interests that they should be destroyed." In the case of the Rising Sun, (2 Ch. Rob., 104,) Sir William Scott says: "Spoliation is not alone, in our courts of Admiralty, a cause of condemnation; but, if other circumstances occur to raise suspicion, it is not too much to say, of a spoliation of papers, that the person guilty of that act shall not have the aid of the court, or be permitted to give further proof, if further proof is necessary."

The withholding by the master of the two letters, in the present case, until his examination, while he gave up to the captors the letter

to the British consul at Havana, and, as he says, all his own private papers, would have been a complete suppression of the two letters in question, if their production had not been compelled by the stringent character of the standing interrogatories. In the case of the *Concordia* (1 Ch. Rob., 119) the master withheld his instructions until the time of his examination. Sir William Scott says: "This was certainly incorrect. It is a master's duty to produce all his papers, and, least of all, to withhold his instructions, which are very important papers to be communicated for the interest of both parties." So, also, the concealment by Chadwick of the letters to him, which showed the true character of the enterprise of the *Stephen Hart*, would have been as effectually a destruction of those papers, for the purposes of this case, if they had not been found upon the search, as if they had been actually thrown into the sea and lost. And the suspicion which the law attaches to a spoliation of papers arises with equal force from an attempted spoliation.

That Captain Dyett and all of his crew knew of the blockade of the enemy's ports, is abundantly established by the evidence. Nellman says that "all on board knew that the southern States, including Florida, were in a state of war with the United States, and the southern ports blockaded by the United States navy." "It was a matter of conversation on board during the voyage." Captain Dyett says: "I knew of the rebellion in the southern States, and that some of the southern ports were blockaded."

Captain Dyett says that the vessel was steering for Cardenas when she was captured, and that her course was not altered upon the appearance of the capturing vessel. Chadwick, on his first examination, says the same thing. Nellman says that when they first saw the capturing vessel, about six o'clock in the morning, the *Stephen Hart* was standing towards Key West, and continued on that course until about twelve o'clock, when she tacked and steered towards Havana, and was steering towards Havana when captured; that their course, at all times when wind and weather permitted, was towards Cardenas, except in the instance mentioned, and except when obliged to pursue another course on account of head winds; and that the latter was the reason why the vessel was steering towards Havana at the time of her capture. Nellman says that he had the watch when the capturing vessel was first seen, and that Chadwick had the watch from eight a. m. until noon, and he (Nellman) again from noon to four o'clock. Nellman and Allan say that the capture was made



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about two o'clock p. m. Although Captain Dyett, and Chadwick on his first examination, say that the course of the vessel was, at all times when wind and weather would permit, towards Cardenas, yet it is apparent that she set out from England with the intention of running the blockade if she could, and she was captured in a position consistent with that intention.

The evidence which has been reviewed establishes, beyond reasonable doubt, that the cargo of the Stephen Hart was intended, on its departure from England, to be carried into the enemy's country, for the use of the enemy, by a violation of the blockade of some one of the enemy's ports, either in the Stephen Hart or in another vessel into which the cargo was to be trans-shipped, for the purpose of being transported by sea to the enemy's country. This is clearly established without the aid of the testimony given by Chadwick on his re-examination. Some portions of that testimony have been incidentally alluded to. The other main facts detailed by Chadwick on his re-examination are entirely consistent with all the rest of the evidence in the case, and are corroborated by that evidence. Some of the points of corroboration have been already alluded to, and I shall refer to others.

Chadwick says, on his re-examination: "The vessel was bound to Cardenas, in Cuba; but the destination of her cargo was certainly to one of the confederate States, and the vessel was, in like manner, so destined, if Charles J. Helm, the confederate agent at Cuba, should so direct. That voyage began in London, and was to have ended at Cardenas or any port in the confederate States which the aforesaid confederate agent should direct." He also says: "The vessel was steering for Cardenas, but that port was to be used only as an intermediate port of call, and of transhipment of the cargo, if necessary, or ordered by Charles J. Helm." He also says that after he had gone in the vessel, then called the "Tamaulipas," from New Orleans, by the way of Havana and Matanzas, to Falmouth and Bristol, England, and thence in the same vessel to London, he was requested to go to No. 71 Jermyn street, London. He adds: "I accordingly went, and was there introduced to Mr. Isaacs, the head of the firm of Isaacs, Campbell & Co., and also to a Mr. Hughes, whose first name I did not learn, and who told me he was the commercial confederate agent for purchasing arms and ammunition for, and shipping the same to, the confederate States. He asked me how I would like to run the blockade of the southern States in the Stephen Hart.

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I answered, 'That I would sooner go in a steamer.' There was no definite arrangement made at that time. I was again sent for, and went to the same place, where I met Mr. Isaacs, the same Captain Hughes, and William L. Yancey, of the United States. There was also a South Carolina captain there. I was taken by Captain Hughes and this South Carolina captain, (whose name was Connor,) into another room, and there fully examined in regard to my knowledge of the southern coast of the United States. I was then employed by Captain Hughes as a pilot agent, and to leave the Stephen Hart and go on board of a steamer which he had chartered, and which was then taking in a cargo of arms and ammunition for the confederate States. I was to leave the Stephen Hart, go ashore and take lodgings, and observe secrecy until I was called, which I did. About a week afterwards I was told to go on board of the steamer Gladiator, then lying in the Thames, and examine and see if she had proper boats for landing her cargo in the surf on the southern coast, if required, and report to Hughes. I did so, and reported that she had, with the exception of one boat. I was then ordered to take my things on board of that vessel, (the Gladiator,) and proceed in her to Nassau, and there either obtain a pilot for her, or else pilot her myself into some southern port of the confederate States between Cape Canaveral, in Florida, and York river, Virginia. I went aboard accordingly. That vessel was loaded with arms, ammunition, and army outfits. After I got aboard, it was found that she could not carry all the cargo which had been bought for her, and, accordingly, what portion thereof could not be taken by the Gladiator was put aboard of the Stephen Hart, together with other like cargo to fill her up. I was ordered to proceed from the Gladiator and take charge of the loading and fitting out of the Stephen Hart, which I did. On my recommendation to Captain Hughes, Captain Dyett was appointed master of the Stephen Hart, while I was to go in her nominally as mate, but really in charge of the cargo, consisting of arms and munitions of war. The vessel proceeded down the Thames several miles, and there took aboard a quantity of powder." Nellman testifies to the same effect as to the place where the powder was taken on board. Chadwick proceeds: "Before the Stephen Hart left, I was instructed by Captain Hughes to proceed to Cuba, that is, to Cardenas, and there to work under the instructions of Charles J. Helm, the agent for the 'confederate States' at that place. He said the cargo was to be trans-shipped into a steamer, which could be used with greater



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facility in running the blockade, or she might be ordered to proceed herself." The connexion of Hughes with the transaction, and his being an agent for "the confederate States," and the lader of the cargo on board of the Stephen Hart, are also testified to by Nellman. The contents of the letter of instructions to Captain Dyett confirm all that Chadwick says, on his re-examination, as to the connexion of Helm with the matter, and as to the certain destination of the cargo and the contingent destination of the vessel being to a port of the enemy. It is stated by Nellman that he heard Chadwick say that the cargo was going to the enemy's country, and that a steamer would receive it at Cuba very probably, and would carry it thence to a port of the enemy. And it is apparent, from what Nellman says, that it was understood, on board of the Stephen Hart, that the cargo was destined for a port of the enemy, and was to be carried there in that vessel, or to be transhipped to another vessel for the same purpose. Chadwick proceeds: "The agreement was that I should have \$45 a month for all the time I was employed, including any time I might be detained or imprisoned, in consequence of any attempt to run the blockade; and if I had gone in the Gladiator I was to have received a bounty of \$500; and, in the Stephen Hart, if ordered by Helm to cross the blockade, I was to have a bonus, to be agreed upon with him." The shipping articles confirm this statement of Chadwick's to a certain extent, as they show that his wages were to be £9 per month. They also show that the wages of the mate, whose place he took, were only £6 per month. He then goes on to state, as he had already stated in his affidavit upon which the order for his re-examination was made, that he was induced to state these facts, not by any persons in any way connected with the libellants or captors, but solely by the persuasions of his wife, "who is a loyal woman, and now residing in Boston."

The absence from on board of the Stephen Hart of the bills of lading and manifest, to whose existence the master testifies, and of all invoices of the cargo, has been already referred to. The absence of these papers, in time of war, is a suspicious circumstance, as affecting the question of the neutrality of the cargo and the honesty of the trade. (1 Kent's Comm., 157; Halleck on International Law, chapter 25, section 25, page 622)

It has been strongly urged upon the court, in the present case, that as Harris, the alleged owner of the vessel, is not shown to have any

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interest in any of the cargo, the vessel can be visited with no greater penalty for carrying contraband articles, even though they were intended for the enemy, than the loss of freight and expenses. But, even on the assumption that the grounds already set forth in respect to the real ownership of the vessel, are not sufficient for her condemnation, the court is of opinion that her condemnation must, under the circumstances, follow the condemnation of the cargo, the latter being contraband of war, and intended, on its departure from England, to be carried into the enemy's country by a violation of the blockade. The contingent destination of the vessel to a blockaded port would be sufficient, under the authority of the case of the *Richmond*, before cited, to warrant her condemnation. But, even if her destination was only to Cardenas, yet, as her cargo was intended, on its departure from England, to be introduced into the enemy's country, by being transhipped from the vessel at Cardenas, condemnation must equally follow, because of the employment of the vessel in this unlawful enterprise, under the circumstances disclosed in this case. As testified to by Captain Dyett, there was no charter-party for the voyage. He says that he was put in charge of the vessel, not by Harris, her alleged owner, but by S. Isaac, Campbell & Co., the claimants of the cargo. No instructions from Harris to Captain Dyett are found, but only instructions to him from S. Isaac, Campbell & Co. Harris, therefore, surrendered the entire control of his vessel to that firm, and her master must be regarded as their agent, and the claimant of the vessel must be held responsible for the use to which the master and the claimants of the cargo put the vessel. (*Jecker v. Montgomery*, 18 Howard, 110, 119.) That use was the carrying, for a portion of the distance on its way to the enemy's country, of a cargo contraband of war, intended for the use of the enemy, and to enter the enemy's port by a violation of the blockade. This use of the vessel was, under the authorities before cited, unlawful in its inception, and, the entire transportation of the cargo from England to the enemy's country being unlawful, the vessel must be condemned for having been permitted, by Harris, to be used, at the pleasure of S. Isaac, Campbell & Co., in carrying out a portion of the unlawful purpose. Such use was, under the circumstances, in judgment of law, with the knowledge and assent of Harris. Chadwick, on his re-examination, states that Harris wished him to continue in the *Stephen Hart* as mate; "that either she would go to, or else he would put me on board of another vessel to go to the Confederate States."

In the case of the *Ringende Jacob*, (1 Ch. Rob., 89,) Sir William Scott says that, under the ancient law of Europe, the carrying of a contraband cargo rendered the vessel liable to condemnation; but that, in the modern practice of the courts of admiralty of England, a milder rule has been adopted, and that the carrying of contraband articles is attended only with the loss of freight and expenses, "except where the ship belongs to the owner of the contraband cargo, or where the simple misconduct of carrying a contraband cargo has been connected with other malignant and aggravating circumstances." And he cites, as an exception, a case attended with particular circumstances of falsehood and fraud, both as to the papers and the destination of the voyage, and in which there was an attempt, under colorable appearances, to defeat the rights of the belligerent. The same doctrine is laid down in the case of the *Jonge Tobias*, (1 Ch. Rob., 329.) In the case of the *Franklin*, (3 Ch. Rob., 217,) a neutral vessel, ostensibly bound to a neutral port, and whose cargo consisted of several articles which were contraband if going to the enemy, was held, by Sir William Scott, to have been captured while really on her way to a port of the enemy. He says: "I have had frequent occasion to observe that it is very difficult to detect a fraud of this species in the particular instances. Pretences and excuses are always resorted to, the fallacy of which can seldom be completely exposed; and therefore, without undertaking the task of exposing them in the particular case, the court has been induced (and I hope not unwarrantably) to hold generally, in each case, that the certain fact shall prevail over the dubious explanations." "I am satisfied, on the facts of this case, that it was the plan of the voyage to carry the ship fraudulently, under a false destination, into a Spanish port. The consequence will be, that this fraudulent conduct, on the part of those who are concerned in the ship, will justly subject her to confiscation. Anciently, the carrying of contraband did, in ordinary cases, affect the ship, and, although a relaxation has taken place, it is a relaxation, the benefit of which can only be claimed by fair cases. The aggravation of fraud justifies additional penalties." He then announces it as the settled rule of law, "that the carriage of contraband, with a false destination, will work a condemnation of the ship as well as the cargo." In that case the owner of the ship was not the owner of the cargo, but, being himself a neutral, had entered into a charter-party for a voyage of the vessel from one neutral port to another neutral port. In a note to the case, these very appropriate remarks are made: "The relaxation of the old



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rule has been directed, in its practical application, as well as in its origin, only to such cases as afford a presumption that the owner was innocent, or the master deceived. Where the owner is himself privy to the transaction, or where his agent interposes so actively in the fraud as to consent to give additional cover to it by sailing with false papers, all pretence of ignorance or innocence is precluded, and there seems to be no further ground, consistent with equity and good sense, upon which the relaxation in favor of the ship can any longer be supposed to exist." The same principles are laid down in the cases of the *Mercurius*, (1 Ch. Rob., 288,) the *Edward*, (4 Ch. Rob., 68,) and the *Neutralitet*, (3 Ch. Rob., 295.) In the latter case, Sir William Scott says that, where a vessel is carrying contraband articles under a false destination or false papers, those circumstances of aggravation constitute excepted cases out of the modern rule, and continue them in the ancient one. In the *Ranger*, (6 Ch. Rob., 125,) which was the case of an American vessel with a cargo which was documented for a neutral port, but was going to the enemy's port, and was condemned as contraband, Sir William Scott says: "I also condemn the vessel, as employed in carrying a cargo of sea stores to a place of naval equipment, under false papers. It is described, I perceive, as an American vessel. But, if the owner will place his property under the absolute management and control of persons who are capable of lending it, in this manner, to be made an instrument of fraud in the hands of the enemy, he must sustain the consequence of such misconduct on the part of his agent." In the *Oster Risoer*, (4 Ch. Rob., 199,) Sir William Scott held, that a master could not be permitted to aver his ignorance of the contents of contraband packages on board of his vessel; that he was bound, in time of war, to know the contents of his cargo; and that, if a different rule could be sustained, it might be applied to excuse the carrying of all contraband.

One important circumstance, to show that the cargo of the *Stephen Hart* was intended for the enemy, is the fact that a part of it consisted of ninety thousand buttons, marked with the initials, "C. S. A.," which it is well understood stand for the words "Confederate States of America," or "Confederate States Army," the buttons being such as are used on army clothing for the three services of an army.

This review of the facts in this case leads to the conclusion that the vessel and her cargo must both of them be condemned. No doubt is left upon the mind that the case is one of a manifest attempt to introduce contraband goods into the enemy's territory by a breach of

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blockade, for which the vessel must be held liable to forfeiture, as well as her cargo. Chadwick was evidently employed by reason of his being a citizen of the United States, familiar with the enemy's country, and qualified to conduct the vessel into one of the blockaded ports. The vessel was captured in a position convenient for running the blockade. The cargo consisted of arms, munitions of war, and military equipments, and, among them, a large quantity of military buttons, stamped in such a manner as to render them capable of no appropriate use save for the infantry, cavalry, and artillery of the enemy's army, thus showing that the enemy's country was their only appropriate destination. The absence of the manifest and bills of lading is not satisfactorily accounted for, and the want of any invoices and of any charter-party is a circumstance of great weight against the lawfulness of the commerce. The attempt, by the master, to suppress his letter of instructions and the letter to Helm, the agent of the enemy in Cuba, and the attempt of the mate to conceal the letters which show that the design was that the Stephen Hart should, under his guidance, enter a blockaded port of the enemy, and which also contain specific directions for entering the harbor of Charleston, justify the conclusion that Charleston, or some other port of the enemy, was the real destination of the vessel and her cargo. The absence of any charter-party, and of any instructions from Harris to Captain Dyett, and the entire surrender by Harris of the control of the vessel to the loaders of the cargo, and to the master as their agent, involve the vessel in all the guilt which attaches to the cargo. The object of carrying the flag of the enemy could only have been that it might be used for the purpose of entering the enemy's ports—a conclusion strengthened by the fact that it was thrown overboard at the time of the capture. The charts found on board are charts of such a character as to enable a vessel to enter many of the blockaded ports. The letter concealed by the mate, which contains directions for entering the harbor of Charleston, is one which he had a motive to preserve by concealing and not to destroy, because, upon the regular papers of the vessel, he must have indulged the hope that she would have been permitted, after a search, to proceed upon the voyage indicated by her papers, and thus that the letter in question would afterwards become useful on a further voyage to the port of the enemy. There is an absence of all papers and circumstances to warrant the conclusion that there was any intent to dispose of the cargo at Cardenas, in the usual way of lawful commerce. The consignee of the entire cargo was the



agent of the enemy, and the cargo was laden on board by the agent of the enemy in London. The asserted ignorance of the master as to the contents of his cargo, and as to the fact that arms are contraband of war, and the ambiguous destination set out in the shipping articles, are circumstances which, with many others, go to swell the volume of suspicion attaching to the enterprise. In addition to all this, there is the positive evidence which has been referred to, particularly of Chadwick and Nellman, as to the actual destination of the cargo. All the material facts of the case, which lead to a condemnation, are proved without any resort to the re-examinations either of Leisk or of Chadwick.

This is not a case for further proof, and no application has been made on the part of the claimants to supply any further proof as to any point. There must, therefore, be a decree condemning both vessel and cargo.\*

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#### THE BARK SPRINGBOK AND CARGO.

Invocation of proofs from two other cases on the docket of the court for trial at the same time with this case, allowed, under the 33d standing rule of the court in prize cases.

*Held*, that the inference was a fair one, that the cargo of the vessel in this case had the same destination which the court had found to be the destination of the cargoes in the other two cases, that is, to the enemy's country through a breach of the blockade.

In addition to the practice of invocation, it is the uniform practice of prize courts to take cognizance of the *status* of the claimants who appear before it, with a view to see whether they come with clean hands, or whether they have been before engaged in a traffic similar to that with which they are charged in the particular case.

The principles announced by this court in the case of *The Stephen Hart* restated and applied.

The well-settled rule of law is, that where contraband goods, destined for the use of the enemy, are found on board of a vessel, all other goods on board of that vessel belonging to the owner of the contraband articles, even those goods which are innocent, must share the fate of the contraband goods.

The penalty of contraband extends to all the property of the same owner, involved in the same unlawful transaction; and, therefore, if articles which are contraband, and are going to the enemy, are on board of the same vessel with articles which are not contraband, and all the articles belong to the same owner, all will be alike condemned, the innocent articles being affected with the contagion of the contraband articles.

Alleged ignorance of the master as to the reason assigned for the capture of his vessel.

It is a principle of prize law, that a master cannot be permitted to aver his ignorance of the contents of contraband packages on board of his vessel, and that he is bound, in time of war, to know the contents of his cargo.

The cargo of the vessel was intended to be delivered in the enemy's country, by trans-shipment, at Nassau, into a vessel in which it should be carried through the blockade; and such was the intended destination of the cargo on its departure from England.

The papers found on board of the vessel, so far as they represent Nassau as the ultimate destination of the cargo, were false and simulated.

There was no *bona fide* intention of landing the cargo at Nassau, for sale or consumption there, so that it might be incorporated, at Nassau, into the common stock in that market; but, if it was

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\* An appeal was taken to the Supreme Court from this decree, and it was there affirmed March 26, 1866.

## The Springbok.

to be landed there at all, it was only to be so landed for the purpose of being trans-shipped, in bulk, into another vessel, in pursuance of the original destination of the cargo to the enemy's country.

Defective character of the bills of lading and manifest of the cargo.

No invoices of the cargo were found on board of the vessel.

The absence from on board of a vessel in time of war of invoices of her cargo is laid down by all the authorities as being a suspicious circumstance, as affecting the question of the honesty of the commerce.

In time of war a vessel should be furnished with documents showing the particulars of her cargo, especially where the vessel is documented for a neutral port in the vicinity of the ports of one of the belligerents, and that neutral port is one extensively used as a mere port of call and of trans-shipment for vessels and cargoes bound to ports of the enemy, and where the parties claiming to own the cargo have been engaged in previous adventures connected with running the blockade, or introducing cargoes of contraband goods into the enemy's country.

The fact that the test oath to the claim in this case is made not by the claimants but by their proctor, and the peculiar language of the proctor's affidavit, commented on.

The contraband articles found on board of the vessel condemned, as having been destined for the enemy's country, and the entire cargo also condemned, as belonging to the owners of the contraband goods.

The vessel, in this case, was employed in carrying on the unlawful enterprise of transporting contraband articles on their way to the enemy's country, to be there introduced by a violation of the blockade, and she was so employed under such a state of facts as made her owners responsible for the unlawful transportation of the contraband articles, and for the acts of the master in relation to such transportation, to such an extent as to justify the condemnation of the vessel.

Formerly, the mere fact of carrying a contraband cargo rendered the vessel liable to condemnation, but the modern rule is different. The carrying of contraband articles is now attended only with loss of freight and expenses, unless the vessel belongs to the owner of the contraband articles, or unless there are circumstances of fraud as to the papers, and the destination of the vessel or the cargo, and thus an attempt, under colorable appearances, to defeat the rights of the belligerent.

Where the owner of the vessel is himself privy to the carriage of contraband, or where the master of the vessel, as the agent of such owner, interposes so actively in the fraud as to consent to give additional color to it by sailing with false papers, the modern relaxation in favor of the vessel no longer exists.

The master of the vessel, in this case, was carrying a cargo composed in part of contraband articles, under false papers. He, and the owners who appointed him as their agent, must be regarded as affected with knowledge of the contraband articles on board, and of their destination, to the same extent as if actual knowledge thereof were brought home to the master and the owners.

And the owners are responsible for the documenting of the cargo by the master, by means of the bills of lading, to a neutral port, when it was in fact destined, composed in part of contraband goods, to a port of the enemy.

If the owner of a vessel places it under the control of a master who permits it to carry, under false papers, contraband goods, ostensibly destined for a neutral port, but in reality going to a port of the enemy, he must sustain the consequence of such misconduct on the part of his agent.

From the moment a vessel, having on board contraband articles which have a destination to a port of the enemy, leaves her port of departure, she may be legally captured; and it is not necessary to wait until the goods are actually endeavoring to enter the enemy's port; for, the transportation being illegal at its commencement, the penalty immediately attaches.

The privilege of further proof is always forfeited where there has been any deception or fraud.

Vessel and cargo condemned.

(Before BETTS, J., decided July 30, 1863, but this opinion delivered subsequently.)

BETTS, J.: On the 3d of February, 1863, in latitude 25° 35' north, and longitude 73° 40' west, the United States steamer Sonoma captured, as lawful prize of war, the bark Springbok. The place of

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capture was from 150 to 200 miles east of the port of Nassau, N. P. A libel was filed against the Springbok and her cargo on the 12th of February, 1863. The libel alleges that the bark, when captured, was "making for the harbor of Nassau."

On the 26th of February, 1863, the court made an order that the cargo of the bark be unladen by the marshal, under the superintendence of the prize commissioners, and be stored in some suitable warehouse, and that an inventory of the cargo be made by the marshal. The reason for making this order was that the cargo was being damaged, by reason of the leaky condition of the deck of the vessel. The report of the prize commissioners, as to the discharge of the cargo under this order, was filed on the 9th of April, 1863, and was accompanied by a list of the packages and cases composing the cargo, and of their marks and numbers; but the packages were not opened. So far as this report shows, the cargo consisted of 4 cases of samples, 3 cases and 4 hogsheads of merchandise, 10 kegs of saltpetre, 15 barrels of mustard, 17 barrels of Epsom salts, 18 bags of pimento, 10 bags of cloves, 60 bags of pepper, 4 cases of root ginger, 2 cases of nutmegs, 220 bags of coffee, 150 chests and 150 half chests of tea, 2 cases of drugs, 1 coil of rope, 4 barrels of pork, 3 water casks,  $\frac{1}{2}$  of a barrel of pitch, 86 bales of dry goods, 641 cases of dry goods, and a quantity of tin plate in boxes, said to be 606 boxes. One of the cases of samples was marked, "B. W. Hart, Esq., Nassau." Eighteen of the cases of dry goods were reported as marked, *A. is a diamond, S. I. C. & Co.*

On the 10th of March, 1863, a claim to the bark was filed on behalf of Thomas May and John E. Oxenberry, both of Falmouth, England, and of the personal representatives of Richard May, deceased, as owners of the bark. The claim set up that the vessel was a British vessel; that her owners were British subjects; and that, at the time of her capture, she was bound from London to Nassau, N. P., and was to have landed her cargo at Nassau, and that there, as to such cargo, her voyage would have fully ended. This claim on behalf of the owners of the vessel was made by James May, the master of the vessel, and the test oath to the claim was made by the master. In that oath he represents himself as the son and agent of Thomas May.

A claim to the cargo of the bark was filed on the 10th of March, 1863, by Mr. Archibald, the British consul at New York, who intervened for the interest of its owner, and set up that the cargo belonged to British subjects, but did not disclose the name of any owner, and

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alleged that the vessel was, when taken, on a legitimate voyage from one British port to another. The test oath to this claim was made by Mr. Archibald.

On the 24th of March, 1863, a claim to the whole of the cargo was filed on behalf of Samuel Isaac and Saul Isaac, composing the firm of S. Isaac, Campbell & Co., of London, England, and Thomas Sterling Begbie, of London. This claim set forth that the claimants were British subjects, and owners of the whole of the cargo of the bark; that she was a British vessel; that the cargo was put on board at London, consigned direct to Nassau, N. P., another British port, where the whole of it was to have been landed, and the voyage, as to the same, was to have ended; that the whole was consigned to Benjamin W. Hart, their agent and consignee, at Nassau; and that the capture was unlawful, for the reason that the vessel and her cargo were, both of them, on a lawful voyage, under the British flag, between England and Nassau. This claim on behalf of the owners of the cargo was made by Mr. Kursheedt, their proctor, as their agent. He also made the test oath to the claim. This test oath sets forth, among other things, that the cargo of the bark was to be "landed permanently" at Nassau, and that "it was not intended that the said bark should enter, or attempt to enter, *any port of the United States*, or that her cargo should be delivered at *any such port*, but that the true and only destination of such cargo was Nassau aforesaid, where the said cargo was to be actually disposed of, and the proceeds remitted to said claimants;" that the "cargo was not shipped in pursuance of any understanding or agreement, either directly or indirectly, with any of the enemies of the United States, or with any person or persons in behalf of, or connected with, the so-called Confederate States of America, but was shipped with the full, fair, and honest intent to sell and dispose of the same absolutely in the market of Nassau aforesaid." All the averments in this test oath are stated in it to be made by Mr. Kursheedt on information and belief; and in it he states that it is impossible to communicate with the claimants in time to allow them to make the claim and test affidavit, and that his information is derived from letters and communications very lately received by him from them, and from documents in his possession, placed there by the claimants.

There were found on board of the bark at the time of her capture a log-book, two cargo books, her register, her shipping articles, five bills of lading, a manifest of the cargo, a copy of a charter-party, a

letter from Spyer & Haywood, as agents of the charterer, to Captain May; a letter from Spyer & Haywood, as agents of S. Isaac, Campbell & Co., to B. W. Hart, esq., Nassau; and sundry other papers, such as a receipt for light duties, a certificate of the shipment of the crew, a clearance, some shipping bills, and a victualling bill.

The log-book, the bills of lading, the manifest, the clearance, and all the other official papers of the vessel speak of her voyage as one from London to Nassau. The date of her clearance from London was December 8, 1862.

The register of the bark describes her as a British-built vessel, registered at Falmouth on the 14th of March, 1860, and of the burden of 188.17 tons. The certificate of registry states that, at its date, Thomas May was sole owner of the vessel; and there is an indorsement upon it, showing that on the next day, namely, the 15th of March, 1860, Thomas May, Richard May, and John E. Oxenberry became the registered owners. It appears, by the certificate, that Richard May was master of the vessel at its date, and, by indorsements on the certificate, that on the 17th of May, 1862, Thomas May was appointed master; that on the 19th of May, 1862, one Percival was appointed master; and that on the 25th of November, 1862, James May was appointed master.

The charter-party is dated at London, November 12, 1862. The charter is from "W. Barter & Co., by authority of T. May," to Thomas Sterling Beghie, of London, for a voyage to Nassau, with a cargo of "lawful merchandise goods," the freight to be paid one-half in advance, on clearance, and the remainder, in cash, on delivery; thirty running days to be allowed the freighter for loading at the port of loading and discharging at Nassau. There is an indorsement on the charter-party, dated "London, 8th December, 1862," and signed "Spyer & Haywood," as follows: "Sixteen days have been expended in this port in loading and despatching the vessel, this day included."

One of the letters found on board is signed "Spyer and Haywood, agents for the charterer," and is dated "London, 8th December, 1862," and is addressed, "Captain James May, barque Springbok." It says: "Your vessel being now loaded, you will proceed at once to the port of Nassau, N. P., and, on arrival, report yourself to Mr. B. W. Hart there, who will give you orders as to the delivery of your cargo, and any further information you may require." The other letter is signed "Spyer & Haywood, agents for Messrs. S. Isaac,

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Campbell & Co.," and is dated "London, 8 Decr., 1862," and is addressed "B. W. Hart, esq., Nassau." It says: "Under instructions from Messrs. S. Isaac, Campbell & Co., of Jermyn street, we enclose you bills of lading for goods shipped per Springbok, consigned to you."

The shipping articles are for "a voyage from London to Nassau, N. P., thence, if required, to any other port of the West India Islands, American States, British North America, east coast of South America, and back to the final port of discharge of cargo in the United Kingdom, or continent of Europe, between the Elbe and Brest, and finally to a port in the United Kingdom; voyage, probably, under twelve months."

The five bills of lading found on board were severally marked by the prize commissioners Nos. 2, 3, 4, 5, and 6, and are known by those numbers in the proceedings in the cause. Nos. 2, 3, and 4 are each of them marked, "Captain's copy," and are not signed by the master. Nos. 5 and 6 are, each of them, signed by the master. No. 2 is a duplicate of No. 6, and No. 4 is a duplicate of No. 5. There is no duplicate of No. 3. It is supposed that Nos. 5 and 6 were those enclosed in the letter from Spyer & Haywood to Hart, as they are each of them signed by the master, and each has upon it a revenue stamp, while Nos. 2, 3, and 4 are wanting in said stamps, for the reason, probably, that they are merely copies retained by the master.

In Nos. 2 and 6 the shippers are "Moses Brothers," and both of those bills of lading are indorsed "Moses Brothers," in blank. The shipment by bill No. 6 is "six hundred and sixty-six packages of merchandise, being marked and numbered as in the margin," to be delivered at Nassau, N. P., "unto order;" freight to be paid "as per charter party." The margin of this bill specifies 150 chests and 150 half chests of tea, 220 bags of coffee, 4 cases of ginger, 19 bags of pimento, 10 bags of cloves, and 60 bags of pepper. This enumeration covers 613 of the 666 packages. The remainder of the packages, 53 in number, are specified in the margin of the bill simply as 7 cases, 10 kegs, and 36 casks. The marks and numbers on all the packages are stated in the margin of the bill. The contents of bill No. 2 are the same in all respects as those of No. 6.

Bill No. 3 is a "captain's copy," of which there was no original found on board. It is for two packages of merchandise, specified in the margin, one as "A. in a diamond, 264, 1 bale," and the other as



"1,266, 1 case," shipped by "Spyer & Haywood." In all other particulars, this bill is like Nos. 2 and 6. It is not indorsed.

Bill No. 4 is a duplicate of No. 5, No. 5 being signed by the master, and No. 4 being marked "Captain's copy." The shippers are stated to be "Spyer & Haywood, as agents," and the shipment to be "one thousand three hundred and thirty-nine packages merchandise, as per indorsement." In the indorsement there is no specification of the contents of any of the packages, but they are merely stated to be 648 cases, 84 bales, 606 boxes, and 1 trunk. The marks and numbers on the various packages are given on the back of the bill. Only one of them has any address other than its mark and number, and that one is the trunk, which is marked "B. W. Hart." No. 5 is indorsed in blank by Spyer & Haywood. No 4 is not indorsed. In all other respects, Nos. 4 and 5 are like the other bills.

The manifest contains a list of the 2,007 packages covered by the bills of lading, and gives them the same marks and numbers as the bills of lading do, but does not describe them any further than by stating them as so many cases, bales, boxes, chests, half chests, bags, kegs, and casks. It states Spyer & Haywood to be shippers of the 1,341 packages, and Moses Brothers to be shippers of the 666 packages, and that the entire 2,007 packages are consigned to "order." This manifest is dated "London, 8 Dec'r, 1862," and is signed "Spyer & Haywood, brokers."

The log-book speaks of the voyage on which the vessel was when she was captured, as one from London to Nassau. It shows that the crew came on board on the 8th of December, 1862; that the pilot came on board the next day; that then the vessel was towed down the river from London as far as Erith; and that, on the 10th of December, she was towed to Gravesend, and thence made sail, the pilot leaving her on the 12th. The sea log commences at noon of the 13th. On the 15th the vessel put into Falmouth on account of heavy weather, where she remained until the 23d, when she proceeded on her voyage. The last entry in her log is at noon on the 1st of February, 1863, in latitude 24° 18' north, and longitude 69° 04' west.

The cargo books give the numbers and marks of each package composing the cargo, with the length, breadth, depth, and solid contents of each, but the packages are simply mentioned as cases, bales, bags, casks, and half barrels, without a designation of the contents, except in the instances of the 606 boxes of tin, the 220 bags of coffee, the 4 cases of ginger, the 10 bags of cloves, the 150 chests and 150 half chests of tea, the 60 bags of pepper, and the 3 cases of samples.

There were no invoices of any part of the cargo found on board of the bark.

On the 12th of May, 1863, the court made an order, on the application of the district attorney, that the marshal cause the packages mentioned in the bills of lading marked Nos. 3 and 4, found on board of the vessel, to be opened and examined in the presence of the counsel of the respective parties; and that the marshal take an inventory of the contents of the packages in the presence of the parties, and make a report thereof to the court, showing the character and quantity of the contents of the packages. This order was made, upon its being shown to the court that, on the unlading of the cargo by the marshal, 3 cases had been discovered containing brass army and navy buttons, some of which were stamped "C. S. N.," and others "A.," "I.," and "C.," respectively, and all of which purported, by the stamp on the inside, to be manufactured by S. Isaac, Campbell & Co., of London, and also 1 case of swords, 1 case of sword bayonets, 10 kegs of salt-petre, and 606 boxes of tin.

On the 27th of May, 1863, the marshal's report of the examination of the packages mentioned in the bills of lading marked Nos. 3 and 4 was filed, accompanied by an inventory of their contents. The articles enumerated in that report which deserve especial mention are the following: 20 bales of "army blankets, butternut color;" 1 case of assorted needles, "manufactured by Isaacs, Campbell & Co., London;" 1 case containing "about 320 gross navy buttons," and in regard to which the report says: "These buttons are of the sizes used in the United States navy. They are made of brass, and are marked on the under side 'Isaacs, Campbell & Co., 71 Jermyn street, London.' On the upper side they are stamped 'C. S. N.,' with the impress of a foul anchor and two cannon;" 2 cases containing "about 616 gross army buttons," in regard to which the report says: "These buttons are of the kind used in the United States army. They are made of brass, marked on the under side 'Isaacs, Campbell & Co., 71 Jermyn street, London.' On the upper side some are stamped 'I.,' others 'C.,' and others 'A.;" 7 bales of "army cloth," in regard to which the report says: "This cloth is of the description used in the United States army, and is of red, yellow, dark blue, light blue, dark green, light green, and other colors;" 1 case, containing "1 dozen cavalry swords and 1 dozen cavalry bayonets, manufactured by Isaacs, Campbell & Co.;" 14 cases of "army brogans;" 1 case of "water-proof navy boots;" and 606 boxes of tin plate. The rest of the cargo, covered by the bills of lading Nos.

of the "gray" or "butternut color" army blankets. And all of those articles were to be made of use to the enemy by being introduced into the country of the enemy.

The fact that the claim of the Isaacs and Begbie is not signed by them, but is signed by Mr. Kursheedt, their proctor of record, and that the test oath to the claim is made by the proctor, has not escaped my attention. The claim states everything on information and belief. The test oath, although made on the 24th of March, 1863, forty days after the service of process on the cargo, states that it is impossible to communicate with the claimants, all of whom, it says, reside in London, in time to allow them to make the claim and test affidavit. Yet the affidavit made by the proctor states that his information as to the matters set up by him is derived from letters and communications then very lately received by him from the claimants, and from documents in his possession placed there by the claimants, and which authorize him to intervene and act as agent as well as proctor for them as to the cargo. It would seem as if the time which was sufficient for sending from New York to London intelligence of the capture of the cargo, and for sending back the letters, communications, and documents mentioned, but none of which were placed before the court, would have been sufficient to procure the signatures and oaths of the claimants of the cargo to a claim and a test affidavit. The same gentleman who thus acted as proctor in the case of The Springbok was the proctor for S. Isaac, Campbell & Co. in the case of The Stephen Hart. In that case a claim was put in to the cargo, signed at London, by Samuel Isaac, and the test affidavit thereto was made by him at London. I also find that the test oath made by Mr. Kursheedt in the case of The Springbok, and that made by Samuel Isaac in the case of The Stephen Hart, contain the same peculiar form of averment, that it was not intended that the vessel should enter, or attempt to enter, *any port of the United States*, or that her cargo should be delivered at *any such port*. I cannot but regard with suspicion the circumstances that the claim and oath are not made by the claimants, but by their proctor; that so unsatisfactory an excuse is given therefor; that the papers and documents which were so weighty in the mind of the proctor in inducing his oath were not put before the court; and that the test oath is so peculiarly worded.

Upon the whole case, my conclusion is, that there are abundant grounds for condemning, not only the contraband articles found on board of the vessel, as having been destined to the enemy's country,

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but also the entire cargo, as belonging to the owners of the contraband goods.

It is quite probable, from the coincidence of dates, that it was intended that the cargo of the Springbok should be carried from Nassau to the enemy's country by the Gertrude. Begbie, the owner of the Gertrude, sent her from Greenock, on the 22d of January, to Nassau. The Springbok, chartered by Begbie, and with a cargo on board in all of which he had an interest, had sailed from Falmouth for Nassau on the 23d of December previous. She was captured on the 3d of February, about 150 or 200 miles east of Nassau. The Gertrude would, in due course, arrive at Nassau but a few days after the Springbok.

It is claimed that the vessel is not subject to condemnation, even though she was carrying contraband articles intended for the enemy. It is urged that her owners had no interest in any of the cargo, and had chartered her for a voyage specifically to Nassau, where, by the charter-party, she was to deliver the cargo, and that neither her owners nor her master had any knowledge that she was carrying any contraband articles, much less that those contraband articles were leaving England on a destination to the country of the enemy. But the court is of opinion that, under all the circumstances disclosed in this case, the vessel must be held to have been employed in carrying on the unlawful enterprise of transporting contraband articles on their way to the enemy's country, to be there introduced by a violation of the blockade, and that she was so employed under such a state of facts as makes her owners responsible for the unlawful transportation of the contraband articles, and for the acts of the master in relation to such transportation, to such an extent as to justify the condemnation of the vessel. Formerly, the mere fact of carrying a contraband cargo rendered the vessel liable to condemnation, but the modern rule is different. The carrying of contraband articles is now attended only with loss of freight and expenses, unless the vessel belongs to the owner of the contraband articles, or unless there are circumstances of fraud as to the papers and the destination of the vessel or the cargo, and thus an attempt, under colorable appearances, to defeat the rights of the belligerent. (*The Ringende Jacob*, 1 Ch. Rob., 89; *The Jonge Tobias*, Id., 329; *The Franklin*, 3 Ch. Rob., 217.) In this last case, the owner of the vessel, who was not the owner of the cargo, was himself a neutral, and had entered into a charter-party for a voyage of the vessel from one neutral port to another neutral port. In all these particulars, he occupied the position of the owners of the Springbok. But although, in the case

of the Franklin, the vessel was ostensibly bound to a neutral port, Sir William Scott held that she was in fact bound to a belligerent port, and condemned her because she had on board contraband goods destined for a belligerent port. And he announces it as the settled rule of law, "that the carriage of contraband with a false destination will work the condemnation of the ship as well as the cargo." Where the owner of the vessel is himself privy to such carriage of contraband, or where the master of the vessel, as the agent of such owner, interposes so actively in the fraud as to consent to give additional color to it by sailing with false papers, the modern relaxation in favor of the vessel no longer exists. (The Franklin, 3 Ch. Rob., 217, note; The Mercurius, 1 Ch. Rob., 288, note; The Edward, 4 Ch. Rob., 68; The Neutralitet, 3 Ch. Rob., 295.) These cases are cited with approbation in Carrington v. The Merchants' Insurance Co., (8 Peters, 495, 520, 521.) In delivering the opinion in that case, Mr. Justice Story says: "The belligerent has a right to require a frank and *bona fide* conduct on the part of neutrals, in the course of their commerce, in times of war; and if the latter will make use of fraud and false papers to elude the just rights of the belligerents, and to cloak their own illegal purposes, there is no injustice in applying to them the penalty of confiscation. The taint of the fraud travels with the party and his offending instrument during the whole course of the voyage, and until the enterprise has, in the understanding of the party himself, completely terminated."

In the present case, we find that Begbie, the charterer of the vessel, is set up as the owner, jointly with S. Isaac, Campbell & Co., of the whole of the cargo; that Spyer & Haywood, the agents of Begbie, the charterer of the vessel, were also the agents of S. Isaac, Campbell & Co., the co-owners of the cargo; that Captain May, the master of the vessel, is the son of Thomas May, who is one of the three owners of the vessel; that Captain May signed bills of lading for 1,394 packages of merchandise, to be transported, in time of war, ostensibly to the port of Nassau, the principal port of call and trans-shipment for vessels and cargoes destined to ports of the enemy by a breach of blockade; that the contents of only 613 of the packages covered by the bills of lading were specified in them, the articles so specified being only the tea, coffee, ginger, pimento, cloves, and pepper; that he sailed with a manifest specifying not a single article contained in his cargo, but merely giving the marks and numbers on the packages, and describing them as cases, bales, boxes, chests, bags, kegs, and casks; that he sailed without any invoices containing the particulars

of his cargo; that he was appointed to the command of the vessel, as he himself says, by her owners; that the only instructions he carried with him were instructions from Spyer & Haywood, as agents for Begbie, the charterer, to proceed to Nassau, and to report himself to Mr. Hart there, and receive orders from him as to the delivery of the cargo; that his failure to demand and carry with him full and clear invoices, containing full particulars of his cargo, was a deliberate one, because he says that the invoices were to be sent to Nassau by mail steamer, thus showing that he knew of the existence of invoices of the cargo; and that he declares his ignorance of the contents of the cargo, or that there were any goods contraband of war on board—an ignorance which the court cannot, under the circumstances, regard as a real ignorance, and which, if it were a real ignorance, is inexcusable on the part of a master in time of war. The conclusion is irresistible, that the master was carrying this cargo, composed, in part, of contraband articles, under false papers. He, and the owners who appointed him as their agent, must be regarded, under the circumstances, as affected with knowledge of the contraband articles on board, and of their destination, to the same extent as if actual knowledge thereof were brought home to the master and the owners. The master, and, through him, the owners, must be held to the same knowledge of the carriage by the vessel of the navy buttons, which could have but one destination, as if they had personally and knowingly put those articles on board. The master's ignorance that such navy buttons were on board, when he would have learned the fact if he had required the production to him, so that he might carry them on board of his vessel, of invoices containing full particulars of the cargo, was a wilful shutting of his eyes, under such circumstances as to make him and the owners of the vessel responsible for the carrying of whatever contraband articles should turn out to be on board, destined for the use of the enemy. Moreover, charged, as he and his owners must therefore be, with knowledge that the contraband articles were on board, and were going to the enemy, the owners must be held responsible for the documenting of the cargo by the master, by means of the bills of lading, to the neutral port of Nassau, when it was in fact destined, composed in part of contraband goods, to a port of the enemy. This was, on the part of the master, for whose acts the owners of the vessel are responsible, a carrying of the contraband articles under a false destination, and with false papers, thus bringing the case directly within the authorities before cited. If the owner of a vessel places it under

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the control of a master who permits it to carry, under false papers, contraband goods, ostensibly destined for a neutral port, but in reality going to a port of the enemy, he must sustain the consequence of such misconduct on the part of his agent. (*The Ranger*, 6 Ch. Rob., 125; *Jecker v. Montgomery*, 18 Howard, 110, 119; *The Mercurius*, 1 Ch. Rob., 80.) In the *Vrouw Judith*, (1 Ch. Rob., 150,) the principle is laid down by Sir William Scott, in respect to the act of the master of a vessel in breaking a blockade, that such act binds the owner, in respect to the conduct of the vessel, as much as if it was committed by the owner himself; that, if the master abuses his trust as to the powers with which the law invests him, it is a matter to be settled between him and the person who constituted him master; but that his act of violation is, as to the penal consequences, to be considered as the act of the owner. So, also, in the *Columbia*, (1 Ch. Rob., 154,) it was held, by Sir William Scott, that the penalty of breaking a blockade attaches to a vessel by the conduct of the master, although the owner be ignorant of the blockade. The principle of that case was that, although the intention of the owner of the vessel may have been innocent, he will be penally affected by the misconduct of his agent, who has misused the trust confided to him, and that, in such case, the act of the agent, such as the act of a master in breaking a blockade, affects the owner of the vessel to the extent of the whole of his property concerned in the transaction. The same general principle was recognized by this court in the case of *The Hiawatha*, and by the Supreme Court, on appeal, in the same case. (2 Black, 635, 678.) Both courts held that the neutral owners of the *cargo* of the *Hiawatha*, though not cognizant of the blockade, were responsible for the act of the master of the vessel in violating the blockade. The Supreme Court affirmed the decision of this court condemning both vessel and cargo, and declared that "the cargo must share the fate of the vessel."

The act of the master of the *Springbok* in signing bills of lading of the character of those which he signed, and in sailing with a manifest giving no information as to the contents of his cargo, and in not carrying invoices giving particulars of the cargo, and in then testifying to his ignorance as to what he had on board, can be regarded in no other light than as a concealment of the real character of the contraband goods, so as to subject the vessel to condemnation, as the result of such fraud, when, under other circumstances, she might go free, even though the goods were confiscated. (*Moseley on Contraband*, 97, 98.)

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The Peterhoff.

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It is well settled that, from the moment a vessel, having on board contraband articles which have a destination to a port of the enemy, leaves her port of departure, she may be legally captured; that it is not necessary to wait until the goods are actually endeavoring to enter the enemy's port; and that, the transportation being illegal at its commencement, the penalty immediately attaches. (Halleck on International Law, chap. 24, sec. 7, p. 573; Wildman's International Law, vol. 2, p. 218; 1 Duer on Insurance, 626, sec. 7; The Imina, 3 Ch. Rob., 167; The Trende Sostre, 6 Ch. Rob., 390, note; The Columbia, 1 Ch. Rob., 154; The Neptunus, 2 Ch. Rob., 110.)

There has been no application made to the court for leave to furnish further proofs, but an appeal to the Supreme Court was taken within ten days after the decree was made. Moreover, I do not think this case is one in which the owners of either the vessel or the cargo have so conducted as to entitle themselves to supply further proof. The conduct of the master, representing the owners of the vessel, was such, in affecting his ignorance or concealing his knowledge of the contraband articles on board, as not to justify the favorable consideration of the court towards the vessel; and the owners of the cargo are not parties to whom any such favor can be accorded. The privilege of further proof is always forfeited where there has been any deception or fraud. (The Eenrom, 2 Ch. Rob., 1.)

The vessel and her cargo must both of them be condemned.\*

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THE STEAMER PETERHOFF AND CARGO.

On motion of the district attorney, acting under instructions from the government, a mail bag, under the official seal of the general post office of Great Britain, found on board of the prize vessel, was ordered by the court to be delivered to the district attorney, to be by him disposed of conformably to the instructions of the government.

The attorney for the United States is, by law, official master of suits prosecuted by the United States in the prize court, and has authority, at his discretion, to offer to or withhold from the consideration of the court any particular of testimony relative to a prize suit in prosecution in court, under his discretion.

In this case the court made an order for the unloading, opening, and examination of the cargo, to ascertain its nature and quality.

The court refused to allow a witness, who was a passenger on the prize vessel, and who had been examined *in preparatorio*, to be re-examined for the purpose of showing his personal loyalty, on the ground that the question of his individual loyalty or disloyalty was of no importance, and that his political *status* was shown to be that of an enemy.

Under the special circumstances of this case the court permitted the master of the prize vessel to be re-examined on the standing interrogatory as to the destruction of papers, and ordered him to be at the same time examined on three special interrogatories framed by the court, al-

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\*An appeal was taken to the Supreme Court from this decree.



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though the testimony of all the witnesses had been filed in court and an order made that the proofs be opened.

The court struck out from the testimony of the master, as irrelevant, a statement made by him as to another witness, which was not responsive to any part of the standing interrogatories.

A prize commissioner has no right to put to a witness any interrogatories except the standing ones, or those specially framed by the court for the particular case.

The court rejected, as evidence, a statement made on the record by the prize commissioner in regard to the reluctance of a witness to answer.

A document produced for the first time at the hearing, and forming no part of the depositions in the case, is not admissible in evidence.

Although such document, if properly put in evidence, would be regarded by the court as a very material piece of evidence against the vessel and her cargo, yet the court did not, upon the proofs in the case, entertain any such doubt upon the question of condemning the vessel and cargo, as to make it proper to direct an order for further proof in order to permit the introduction in evidence of the document.

In prize cases, the court of that district into which the property is carried and proceeded against, has jurisdiction.

The mere carrying of a vessel, or of her cargo, seized on the high seas as prize of war, into any particular district, without the institution there of any proceedings in prize, cannot affect or take away the jurisdiction over the property of the district court of another district, in which the proceedings against the property may be instituted after the property has been carried into such other district.

A neutral vessel, laden with a neutral cargo, may lawfully trade between neutral ports, in time of war, in all descriptions of merchandize, contraband or otherwise, without being liable to seizure by a belligerent.

But a seizure is justifiable if a vessel be engaged in carrying contraband of war for or to the enemy, or to the port of the enemy; and all contraband goods, even though belonging to neutrals and found in neutral bottoms, are liable to capture and condemnation, if seized by a belligerent while on a destination for the use of the enemy of such belligerent.

The principles announced by this court in the cases of *The Stephen Hart* and *The Springbok* affirmed.

A prize court will not shut its eyes to a well-known and obvious system of conducting trade with the enemy in contraband articles.

Effect of a claim put in to prize property by underwriters who had insured it against capture.

A person who was a citizen of the United States, residing in Texas at the time of the breaking out of the war, and has never owed any allegiance to any foreign country, is to be regarded as a citizen of the enemy's country, in prize proceedings, and cannot appear as a claimant in them, because he has no *persona standi* in court.

Implements and munitions of war which, in their actual condition, are of immediate use for war-like purposes, are to be deemed contraband whenever they are destined to the enemy's country or to the enemy's use.

All military equipments and military clothing are regarded as contraband articles.

In England all manufactured articles which, in their natural state, are fitted for military use, or for building and equipping ships-of-war, among which articles cordage is included, are contraband in their own nature.

The probable use of articles is inferred from their destination; and if articles capable of military use are going to a place where any need of their employment in military use exists, it will be presumed that they are going for military use, although it is possible that they might have been applied to civil consumption.

In this case the vessel, although ostensibly on a voyage from London to neutral waters at the mouth of the Rio Grande, was laden with a cargo composed largely of articles contraband of war, which were not designed, on their departure from England, to be sold or disposed of in the neutral market of Matamoras, but were designed to be delivered, either directly, or indirectly by trans-shipment, in the country of the enemy and for the use of the enemy.

The refusal by the master of a neutral merchant vessel to permit the papers of his vessel to be taken on board of a belligerent cruiser when demanded, to be there examined by the commander of the cruiser, especially after those papers have been already so far examined on board

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of the merchant vessel, by a subordinate officer from the cruiser, as to excite suspicion concerning their regularity, is, on the part of the neutral master, a resistance to the right of visitation and search, even though he offers his papers for examination on board of his own vessel, and his vessel for search.

Papers on board of the vessel were destroyed at the time of her capture, some by being burned and some by being thrown overboard by order of the master.

False evidence of the master as to the destruction of the papers.

The spoliation of papers on board of a neutral vessel, when overhauled by a belligerent cruiser, is of itself a strong circumstance of suspicion.

In England and in the United States spoliation of papers is not held to furnish of itself sufficient ground for condemnation, but to be a circumstance open to explanation; yet, if the explanation be not prompt or frank, or be weak and futile, if the case labors under heavy suspicions, or if there be a vehement presumption of bad faith or gross prevarication, it is ground for the denial of further proof, and condemnation ensues from defects in the evidence, which the party is not permitted to supply.

Deficiencies in the manifest in respect to the contraband articles on board.

The absence of invoices as to some of the contraband articles.

Defects in the bills of lading.

Character and quantity of the contraband portion of the cargo.

Character and *status* of some of the passengers on the vessel.

Notwithstanding the ostensible destination of the vessel to neutral waters at the mouth of the Rio Grande, the evidence establishes the actual hostile destination of the cargo.

All the claimants of the vessel and cargo had on board contraband articles, which were destined to be delivered directly, or indirectly by trans-shipment, into the enemy's country, and for the use of the enemy.

Where contraband articles, destined for the use of the enemy, are found on board of a vessel, all other goods on board of that vessel belonging to the owner of the contraband articles, even those goods which are innocent, must share the fate of the contraband goods.

Whether the English doctrine is sound that contraband goods are liable to capture, even though destined to a neutral port, if found entering waters common to both the neutral port and a hostile port, *quere*.

Where the vessel belongs to the owner of the contraband articles, or where there are circumstances of fraud as to the papers, or the destination of the vessel or the cargo, and thus an attempt, under colorable appearances, to defeat the rights of a belligerent, the vessel which carries the contraband articles will be condemned, and the penalty on the vessel will not be limited merely to a loss of freight and expenses.

So, too, the vessel will be condemned not only where her owner is privy to the carriage of contraband, but where the master of the vessel, as the agent of such owner, interposes so actively in the fraud as to consent to give additional color to it by sailing with false papers.

So, also, if the owner of a vessel places it under the control of a master who permits it to carry, under false papers, contraband goods ostensibly destined to a neutral port, but in reality going to the country of the enemy, he must sustain the consequence of such misconduct on the part of his agent.

A neutral owner of a vessel is, as a general rule, held responsible for all the acts of the master of his vessel committed in violation of the rights of a belligerent.

A master is, in time of war, bound to know the contents of his cargo, and cannot be permitted to aver his ignorance of the contents of contraband packages on board of his vessel.

From the moment a vessel, having on board contraband articles which have a destination to the enemy's country, leaves her port of departure, she may be legally captured, and it is not necessary to wait until the goods are actually endeavoring to enter the enemy's country, the penalty attaching the moment the illegal transportation commences.

(Before BETTS, J., decided July 30, 1863, but this opinion delivered subsequently.)

BETTS, J.: The steamer Peterhoff was captured, as lawful prize of war, on the 25th of February, 1863, by the United States steamer

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Vanderbilt, off the island of St. Thomas, about four and one-half miles from the outer road or mouth of the harbor. She was placed in charge of a prize-master, who proceeded with her to Key West. The United States district judge, the marshal, and the district attorney being absent on her arrival at Key West, the prize-master reported to Admiral Bailey, the naval officer in command at Key West, who ordered the prize-master to proceed with the prize to New York. She arrived there on the 28th of March, and the libel in this case was filed on the 30th of March.

On the 21st of April, 1863, Stephen Jarman, the master of the Peterhoff, intervening for the interest of the owners of the vessel and her cargo, filed a claim to the vessel and her cargo, on behalf of such owners, as his principals, not disclosing any names, but averring that he was master of the vessel at the time of her seizure, duly appointed by her owners, and was their lawful agent, and the rightful bailee of the vessel and cargo. The test oath to this claim was made by Captain Jarman, and averred that the vessel and cargo belonged to British subjects. The claim denied the lawfulness of the seizure, and prayed for a restoration of the vessel and cargo to him or to his principals.

On the same day, Robert Mackie, of New York, the agent of Lloyd's, intervening for the interest of the underwriters of the Peterhoff and her cargo, filed a claim to both, for such underwriters. He averred, in the claim, that the vessel and her cargo were fully insured by his principals, and that the ownership of both was vested in them, and denied the lawfulness of the capture, and prayed the restoration of the vessel and cargo to him or to his principals. The test oath to this claim was made by Mr. Mackie, and averred that the vessel and cargo belonged, at the time they were seized, to subjects of Great Britain.

On the 22d of April, 1863, a claim was filed by Samuel J. Redgate, in which he represented himself as "late of Texas, and lately a political refugee from that State, but more recently sojourning in Great Britain, merchant, intervening for himself, as owner, agent, and consignee of a large portion of the cargo of the said steamer Peterhoff, of the value of three hundred and seventy-five thousand dollars, or thereabouts." He claimed so much of the cargo as stood in his name "as owner or consignee, or under power of attorney to act as consignee or agent, for himself and principals," and stated that he was *bona fide* owner, consignee or agent of that portion of the cargo,

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and was empowered to attend to and protect the interests in that portion, and to demand restitution thereof, with damages for unlawful capture and detention "in behalf of himself as owner, consignee or agent, and also in behalf of the underwriters," and denied the lawfulness of the capture. The test oath to this claim was made by Redgate, and averred that such portion of the cargo belonged to him as owner, consignee, agent, &c., as set forth in the claim.

On the same day, George W. Almond, who represented himself as a "resident of the city of London, and a subject of the Crown of Great Britain, merchant, intervening for himself as owner, and as agent and consignee, of a portion of the cargo of said steamer Peterhoff, of the value of one hundred and fifty thousand dollars, or thereabouts," filed a claim to "that portion of said cargo which stands in his name as owner or consignee, or under power of attorney to act as consignee or agent, for himself and principals," and stated that he was *bona fide* owner, consignee or agent of that portion of the cargo, and was authorized to attend to and protect the interests in that portion of the cargo, and to demand restitution thereof, with damages for unlawful capture and detention, "in behalf of himself as owner, consignee, or agent, and also in behalf of the underwriters," and denied the lawfulness of the capture. The test oath to this claim was made by Almond, and averred that the above-named portion of the cargo belonged to him as owner, consignee, agent, &c., as set forth in the claim.

The depositions *in preparatorio*, taken in the case, are those of Stephen Jarman, master, Henry Bound, first mate, Walter N. Harris, second mate, Christopher H. Tregidgo, third mate, Robert Bowden, George W. Almond, and Samuel J. Redgate, passengers, John Murphy, chief engineer, John Murphy, first assistant engineer, Thomas Webber, steward, George Duffay, fireman, James Diamond, cook, and John Reed and John J. Campbell, seamen. These depositions were all taken in April, 1863, Jarman, Bowden, and Almond having been examined on the 1st, Redgate on the 1st and 20th, Bound on the 2d, Murphy, first assistant engineer, Diamond and Reed on the 4th, Webber on the 6th, Harris and Tregidgo on the 11th, and Murphy, chief engineer, Duffay and Campbell on the 13th.

Among the articles found on board of the Peterhoff at her capture was a mail bag, which was delivered by the prize master to the prize commissioners. This bag was under the official seal of the general post office of Great Britain. On the 21st of April, 1863, an affi-

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davit, made by the district attorney, as attorney for the United States and the captors, was presented to the court, in which he set forth that he had carefully examined all the ship's papers and evidence taken *in preparatorio* in this case, and had inspected the British mail packages found on board of the vessel; that the mail appeared to be a *bona fide*, authenticated, sealed, public government mail of Great Britain, found on board of a commercial vessel, apparently navigated between London, in England, and Matamoras, in Mexico; that the said evidence furnished no proof that the said mail was false or spurious or simulated, or otherwise than genuine; and that he, as attorney for the United States and the captors, under his general authority as district attorney, and under special authority from the government, consented that said mail be given up, to be sent to its destination. Upon this affidavit, an application was made to the court, by the district attorney, that he have leave to withdraw the mail bag from the custody of the court. The special counsel for the captors opposed the application, but the court, on the 22d of April, made an order, which recited that the attorney for the United States was, by law, official master of suits prosecuted by the United States in the prize court, and had thereby authority, at his discretion, to offer to or withhold from the consideration of the court any particular of testimony relative to a prize suit in prosecution in court, under his discretion, and directed that the mail bag be delivered to the attorney for the United States, out of the custody of the court, to be by him disposed of conformably to the instructions of the government of the United States. The counsel for the claimants were present in court when this application was made, but they made no opposition to the granting of the same.

On the 25th of April, 1863, an affidavit was presented to the court, made by the prize-master who brought the Peterhoff to New York, setting forth that she was laden with a large cargo packed in boxes, bales, and cases, the true character of which could not otherwise be ascertained than by the unlading, opening, and inspection thereof; that such papers as were found on board of the vessel very imperfectly disclosed the true contents of the bales, cases, and boxes, and described the same as "merchandise" simply, except in a few instances of artillery boots and army shoes and blankets; and that he had been informed, by persons composing the crew of the captured vessel, that packages of papers of the vessel were burned or thrown overboard as the vessel was about being captured. Upon this affidavit,

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and on the application of the United States and the captors, an order was made by the court, directing the marshal to cause the cargo of the vessel to be unladen, and stored in a safe warehouse having sufficient accommodations for the unpacking and inspection of the cargo, and appointing three competent persons, Messrs. Edwin Gerard, Henry H. Elliott, and Orison Blunt, to examine and make an inventory of the cargo upon its unloading, and to open the boxes, cases, and bales, and remove their contents, so far as should be necessary to ascertain the nature and quality of the cargo, and to report to the court the particulars, names, descriptions, and assortments of the goods, with their marks and numbers, and the nature, use, quantities, and qualities thereof, and any fact they might discover and deem material in the premises, and that, after such inspection, the contents of the packages should be restored to their original condition, and that the seals of the prize commissioners should be then placed on the place of storage of the cargo.

The report of the three gentlemen appointed to make an inventory of the cargo was filed on the 2d of June, 1863. They annexed to their report an inventory of the whole of the cargo. Two of the commissioners (Messrs. Blunt and Elliott) state, in the report, "that a very large portion of the said cargo will be found, on an examination of the inventory aforesaid, to be particularly adapted to *army* use; that large numbers of the cases contain '*Blucher boots*,' which are known as army shoes; a number of cases contain '*cavalry boots*' and are so labelled, samples of said labels being hereto annexed; that 192 bales of the said cargo consist of *gray blankets*, adapted to the use of an *army*, and are believed to be such as are used in the United States *army*; 95 casks contain horseshoes of a *large size*; 36 cases of a large size contain *artillery harness*, in sets for four horses, with two riding saddles attached to each set; there were also on board two *hydraulic presses* in pieces, adapted for *cotton*; that a considerable portion of said cargo consists of drugs, directed *Burchard & Co., successors, Matamoras, Mex'o*, in which, among an assorted lot of drugs, quinine, calomel, morphine, and chloroform form an important portion." The report states that the cargo consisted of 1,520 cases, 110 trunks, 287 bales, 169 casks, 209 kegs, and 559 bundles of merchandise, 1,343 bundles of hoop iron, and 280 bundles or bars of steel or iron. Mr. Gerard, one of the commissioners, appended to the report a statement that he concurred in the inventory and description of the cargo, but differed from his colleagues as to that portion of their report which

described certain of the cargo as being particularly adapted to the use of an army. The samples of labels referred to as annexed are two in number, and were taken from trunks forming part of the cargo. One of the labels has upon it the words, "100 army Bluchers," and the other the words, "36 cavalry boots." It appears, from the inventory of the cargo annexed to the report, that of the 4,477 cases, trunks, bales, casks, kegs, bundles, and bars which the report states to have been found on board, the commissioners opened and examined 842 cases, 43 bales, 114 kegs, 2,109 bundles, 23 casks, and 11 trunks, being, in all, 3,142 parcels; that among these were 20 cases of Blucher boots, 5 cases of Bluchers and gentlemen's boots, 66 cases of Wellington, Napoleon, police, cavalry, and army Blucher boots, 15 cases of army Blucher boots, 2 cases of full-length russet army boots, 2 cases of black and russet Bluchers, 3 packages of shoes and light Blucher boots, 1 bale of gray mixed blankets, 1 bale of army or gray blankets, 9 bales of mixed and gray blankets, 1 bale of white blankets, 2 cases of artillery harness, 7 cases of artillery harness and chains, 2 packages of saddles and hardware, 2 packages of saddlery and quinine, 11 cases of drugs, 1 case of quinine, 2 cases of assorted drugs, 5 kegs of nails, 107 iron kegs of nails, 9 bags of horseshoe nails, 1 cask of horseshoes, 3 packages of saddlery hardware, 2 cases of buckles, 4 cases of hinges, screws, stocks, and dies, 3 casks of hardware, 3 cases of cast steel and files, 250 bundles or bars of steel or iron, 5 cases of planes, axes, &c., 6 packages of planes and hardware, 2 packages of saws and files, 6 packages of pickaxes and handles, axes and hatchets, 147 bundles of spades and shovels, 42 anvils, 60 blacksmiths' bellows, 1 cask of vices, 2 cases and 9 bundles of machinery, being an iron bed-plate, an iron piston-rod, and other articles for a press, 1,343 bundles of hoop-iron, 501 boxes of tin, 1 case of horse-brushes, 6 cases of red, white, and blue bunting, and 305 coils of rope.

A large number of papers were found on board of the Peterhoff at the time of her capture, and have been laid before the court. The affidavit of the prize-master, taken according to the usual practice, on the delivery of the papers to the prize commissioners, states that delivery of the papers to him was refused until after the arrival of the vessel at Key West, where, under instructions from Admiral Bailey, he demanded, in writing, of the master and passengers on board, that the papers should be delivered to him, whereupon they were delivered. Those which are of any importance consist of three bills of health; a certificate from the Mexican vice-consul at London, certifying to the

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conclusion that, if the master did not in fact know what were the contents of the packages, his ignorance was a studied ignorance. But the more reasonable conclusion, in view of his declared want of information as to the cause of his capture, while the other witnesses frankly declare the cause to have been the suspected presence of contraband goods, or the defective character of the bills of lading, is that his ignorance is affected and not real.

The circumstance that all the bills of lading say that the freight is to be paid "as per charter-party," shows that the charterer of the vessel, Begbie, must have been interested in the whole of the cargo. The inference that there was a single ownership of the whole of the cargo, although part of it was shipped in the name of Moses Brothers, and the rest of it in the name, some of Spyer & Haywood, and some of Spyer & Haywood, as agents, is deducible from the fact that Spyer & Haywood, as agents for the charterer, instructed Captain May, on his arrival at Nassau, to report to Mr. Hart for orders as to the delivery of the cargo; and from the further fact, that Spyer & Haywood, as agents for S. Isaac, Campbell & Co., enclosed in a letter to B. W. Hart the bills of lading Nos. 5 and 6, which comprise the entire contents of the cargo, except the two packages mentioned in bill No. 3, being the bale of brown paper and one case of the army buttons; and from the further fact, that Spyer & Haywood signed the indorsement on the charter-party, and also, as brokers, signed the manifest of the entire cargo. There was, therefore, a single ownership for the entire cargo, both contraband and non-contraband; and it is fair to infer, from all the evidence, that there must have been a single destination for the whole of the cargo. If, therefore, any particular destination can, with certainty, be affixed to any portion of the cargo, the same destination must, on all the evidence, be ascribed to the whole of it.

The absence from on board of the Springbok of any of the invoices of the cargo is a fact of peculiar significance in the present case. The bills of lading mention no articles except the tea, coffee, ginger, pimento, cloves, and pepper. The manifest specifies nothing as to the contents of the packages. The cargo books only mention tea, coffee, ginger, cloves, pepper, and tin. If the invoices had been on board, they would, if they were as true and full as genuine invoices should be, have disclosed the full particulars of the cargo. The inquiry is a pregnant one: Why were the invoices not on board of the vessel? If they had been, their disclosure of the contraband articles could



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been written, in one instance, after the words "145 coils," and then carefully erased with ink. The items of "50 coils," "45 coils," and "20 coils" also occur in the manifest, with nothing written or erased thereafter. The entire cargo is stated, in the manifest, to be consigned to "order," except in the instance of 49 cases, 2 iron drums and 1 package, which are stated as being "addressed to Burchard & Co., successors, Matamoras," and as being consigned to "Messrs. Burchard & Co." The aggregate of the boxes, bales, cases, kegs, coils, packages, casks, bellows, bundles, anvils, chests, trunks, iron drums, bars, and bags is 4,581.

The receipt for light duties at Plymouth is dated January 19, 1863, and speaks of the voyage of the vessel as from London to Matamoras, *via* Plymouth.

The certificate of the registry of the vessel shows her to be a British-built vessel, built at Sunderland in the year 1862, and of the register tonnage of 669 $\frac{47}{100}$  tons, and is dated at the Custom House, London, December 20, 1862. It states her to be wholly owned by Joseph Spence, of Cowper's court, Cornhill, in the city of London, shipbuilder. The certified copy of said certificate of registry is dated at London, January 14, 1863.

The shipping articles of the vessel are dated January 1, 1863, and state her voyage to be "from London to Matamoras, and any port <sup>and</sup> or ports in the Gulf of Mexico, <sup>and</sup> or North <sup>and</sup> or Sth. America, <sup>and</sup> or West Indies, and back to a final port of discharge in the United Kingdom, voyage not to exceed twelve months." They state her crew to consist of a master, three mates, a carpenter, a steward, a cook, ten able-bodied seamen, two ordinary seamen, three engineers, eight firemen, and four able-bodied seamen as substitutes, those four substitutes being stated as having joined the vessel at Plymouth, three of them on the 13th of January, and one of them on the 15th, and all the others being stated as having joined the vessel at London, some on the 1st and some on the 2d of January, the crew thus consisting in all of thirty-four persons. The articles state that the seamen and firemen are to assist in the general duties of the ship, and to take in and discharge cargo, &c., when required by the master.

The receipt for harbor dues at Falmouth is dated January 19, 1863.

There were 72 bills of lading found on board of the Peterhoff. Of these 39 are originals, and the remainder are duplicates. Of 1 there are four sets, of 30 more there are duplicates, and of 8 there are no duplicates. Of the 39 bills, 9 are indorsed in blank, 9 are not in-

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dorsed, (8 of these 9 being the 8 of which there are no duplicates, and the remaining one of them being one for articles shipped by Captain Jarman,) 9 are indorsed to Robert Bowden, 4 to G. W. Almond, 3 to Captain Jarman, 2 to S. J. Redgate, 2 to S. J. Redgate & Co., and 1 to S. J. Redgate and J. W. Almond. G. & W. Almond are named as shippers in 3 of the bills, James I. Bennett & Wake in 1, S. J. Redgate in 2, J. Spence in 2, Captain Jarman in 1, and sundry other persons in the rest. The bills of lading, both originals and duplicates, are all of them signed by Captain Jarman, and all of them specify that the goods are to be delivered to "order," except one covering 52 packages, which specifies that the goods covered by it are to be delivered to "Messrs. Burchard & Co., successors, Matamoras." Each of them speaks of the vessel as being "bound for off the Rio Grande, Gulf of Mexico, for Matamoras;" and each of them contains the following language: "Goods to be taken from alongside of the ship, at the mouth of the Rio Grande, at consignees' risk and expense, within thirty days of arrival, providing lighters can cross the bar, or a penalty will be incurred of ten pounds per day after that period." Each of them states that the goods are to be delivered "at the aforesaid off the Rio Grande, Gulf of Mexico, for Matamoras." In some cases the bill specifies that the freight is to be paid in London, and in other cases "at Matamoras." None of the bills of lading in any way specify what the articles covered by them are, except in the instances of a bill of lading of a shipment by James I. Bennett & Wake, which specifies 9 bundles of bagging, (this being the bill of lading that is not mentioned in the manifest,) and of other bills which specify 145 coils of rope, 50 coils of rope, 280 bundles and bars of wrought steel, 2 cases of seeds, 78 kegs of nails, and 1,360 bundles of iron hoops, 500 boxes of tin, 10 bales of gunny cloth, and 13 bales of cotton wrapping, 1,680 pairs of boots, 2 iron drums, 1,080 pairs of blankets, "11 packages hydraulic press," 45 coils of rope, 60 smiths' bellows, 147 bundles of spades and shovels, and 42 anvils, "3 cases medicines," and 9 bags of nails and 20 coils of rope.

A comparison of the inventory annexed to the commissioners' report of the cargo with the bills of lading, in respect to the marks and numbers upon the various packages, shows the following results: In packages covered by bills of lading indorsed to S. J. Redgate & Co. were found saddles and hardware, horse brushes, hardware, saddlery, and quinine, and cast steel and files; in packages covered by a bill of lading indorsed to S. J. Redgate were found 145 coils of rope; in

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packages covered by bills of lading indorsed to Robert Bowden were found Blucher boots, Wellington, Napoleon, cavalry, and army Blucher boots, black and russet Bluchers, gray mixed blankets, and red, white, and blue bunting; in packages covered by bills of lading indorsed to Captain Jarman were found 70 coils of rope, mixed and gray blankets, and assorted drugs; in packages covered by bills of lading indorsed to George W. Almond were found white blankets, light Blucher boots, Blucher boots, saddlery hardware, bundles and bars of steel to the number of 280, 9 rolls of bagging, horseshoes, and horseshoe nails; and in packages covered by a bill of lading indorsed to Samuel J. Redgate and George W. Almond were found tin, being 501 boxes. Bills of lading not indorsed, and of which there were no duplicates, cover packages containing Blucher boots, planes, axes, &c., nails, artillery harness, buckles, artillery harness and chains, army Blucher boots, drugs, quinine, and army or gray blankets. Bills of lading indorsed in blank cover packages containing 23 rolls of bagging, (those packages being marked "Peterhoff, owner,") 90 coils of rope, hinges, screws, stocks and dies, iron kegs of nails, saws and files, pickaxes and handles, axes and hatchets, spades and shovels, 42 anvils, 60 blacksmiths' bellows, vices, planes and hardware, 11 cases of machinery, containing the iron bed-plate, iron piston-rod, and other articles for a press, (J. Spence being the shipper of these 11 cases,) rolls of zinc, iron kegs of nails, and the 1,343 bundles of hoop-iron.

A large number of invoices were found on board of the Peterhoff, covering the entire cargo embraced in the 39 bills of lading, (in which bills 26 shippers are named,) except the articles specified in the inventory before mentioned as artillery harness, buckles, and artillery harness and chains, and the articles contained in packages addressed "Burchard & Co., successors, Matamoras," specified in such inventory as drugs and quinine, and the nine rolls of bagging. An examination of these invoices shows that among the articles covered by the bills of lading indorsed to Almond were 9 tons of horseshoes, 52,000 horseshoe nails, 644 bars of cast steel, 20 coils of Manilla rope, 2,000 pairs of gray blankets, 7,128 pairs of Bluchers, 99 waist belts, 14 ball bags, and a large number of buckles, martingale rings, harness awls, saddlers' knives, saddlers' punches, straps, and horse brushes; that among the articles covered by the bills of lading indorsed to Bowden were 379 yards of blue military cloth and blue military serge, 500 pairs of brown-gray blankets, 700 pairs of Blucher boots,

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650 pairs of men's Bluchers, 472 pairs of Bluchers, 144 pairs of Wellington boots, 76 pairs of riding boots, 200 pairs of negro brogans, and 307 pieces of scarlet, white, and blue bunting; that among the articles covered by the bills of lading indorsed to Redgate & Co. were 200 ounces of quinine, 1,813 pounds of cast steel, 14 riding saddles, 22 bridles, 4 saddle cloths, and a large quantity of halter chains, harness buckles, martingale rings, buckles, trace chains, files, and axes; that among the articles covered by the bills of lading indorsed to Redgate were 145 coils of Manilla rope, weighing 5 tons; that among the articles covered by the bill of lading indorsed to Redgate and Almond were 500 boxes of tin plates; that among the articles covered by the bills of lading indorsed to Captain Jarman were 2,000 pairs of "government regulation gray blankets," 50 coils of Manilla rope, weighing 11,411 pounds, 140 ounces of quinine, 20 pounds of chloroform, and a quantity of morphine, James's powders, Dover's powders, opium, and ipecac; that among the articles covered by the bills of lading indorsed in blank were 14 tons of sheet zinc, 72 iron kegs of nails, containing 7,728 pounds, 1,360 bundles of hoop iron, weighing 34 tons, 1,559 yards of gunny cloth, and 1,988 yards of stout cotton wrapping, the packages containing the last two articles being marked "Peterhoff, owner," and the invoice of them being headed "Adventure to Matamoras, per S.S. Peterhoff, to Pile, Spence & Co., Dr.;" that among the articles shipped by J. Spence and covered by bills of lading indorsed in blank were a large quantity of hatchets, axes, hammers, spades, shovels, planes, augers, gimlets, sledge-hammers, drawing-knives, saws, smiths' bellows, anvils, vices, pickaxes, files and chisels, 90 coils of tarred hemp rope, weighing 11,384 pounds, and a cotton press, the invoice covering the last two articles being headed "Adventure to Matamoras, per S.S. Peterhoff, to Pile, Spence & Co., Dr.;" that among the articles covered by the bills of lading which are not indorsed, and of which there are no duplicates, were 1,000 pairs of "men's army Bluchers," 1,840 pairs of men's Bluchers, 1,160 pairs of other Bluchers, 1,500 pairs of Blucher boots, 180 pairs of long artillery boots, 1,080 pairs of brown-gray blankets, and 100 kegs of nails, weighing 10,000 pounds. The articles specified in the inventory of the commissioners before mentioned as artillery harness, buckles, and artillery harness and chains, and the articles contained in the packages addressed "Burchard & Co., successors, Matamoras," and specified in such inventory as drugs and quinine, (of all of which

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articles there are no invoices,) were covered by bills of lading which are not indorsed, and of which there are no duplicates. The nine rolls of bagging (of which there is no invoice) were covered by the bill of lading in which James I. Bennett & Wake are the shippers, and which is indorsed to Almond. The invoices also show that the other goods covered by the bills of lading indorsed to Almond consisted of hose, shirts, pantaloons, collars, braces, pins, needles, shoes, boots, sheepskins, chamois skins, buttons, felt hats, prints, flannels, blankets, dry goods, drills, shirting, sewing cotton, lace, spool cotton, tape, braid, sewing thread, awls, shoe pegs, linen thread, combs, and padding; that the other goods covered by the bills of lading indorsed to Bowden consisted of shoes, boots, leather, hose, vests, woollen gloves, skirts, sleeves, jackets, woollen shirts, cotton shirts, scarfs, neck-ties, pantaloons, frocks, cravats, mittens, cuffs, cloths, coats, sacks, cassimeres, dress goods, silks, and shawls; that the other goods covered by the bills of lading indorsed to Redgate & Co. consisted of curry-combs, carriage bolts, padlocks, hinges, plane irons, brushes, compasses, saws, locks, gimlets, chisels, dress goods, shirts, hose, felt hats, tea, cloths, knives and forks; that the other goods covered by the bills of lading indorsed to Redgate consisted of preserved meats and soups; that the other goods covered by the bills of lading indorsed to Captain Jarman consisted of flannels; that there were on board goods covered by a bill of lading not indorsed, and in which Captain Jarman was named as the shipper, consisting of shoes, boots, writing paper, pencils, pens, combs, brushes, perfumery, soap, hose, shirts, worsted, spool cotton, pins, needles, buttons, gloves, head-dresses, collars, handkerchiefs, and umbrellas; that the other goods covered by the bills of lading indorsed in blank, and in which J. Spence was the shipper, consisted of screws, locks, padlocks, hinges, butts, nails, rivets, spikes, and bits; that there were on board goods covered by bills of lading indorsed in blank, and in which Redgate was the shipper, consisting of vests, scarfs, shirting, shoes, ties, braces, collars, shirts, drawers, belts, hats, flannel, muslin, cloths, prints, boots and shoes; that the other goods covered by the bills of lading indorsed in blank consisted of garden seeds, cloths, and hats; and that the other goods covered by the bills of lading not indorsed, and of which there were no duplicates, consisted of planes, ploughs, axes, cloths, dress goods, shoes, hose, writing paper and envelopes.

In announcing my decision in this case, at the time the decree was entered, I stated that I should prepare an opinion in the case at a

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future day. I now find that, on the 19th of November, 1863, a report of the prize commissioners was filed, setting forth, in pursuance of the final decree of the 1st of August, 1863, a detailed inventory of the contents and value of the cargo of the Peterhoff, made under their direction. It appears from that report, of November 19, 1863, that the articles specified in the report of June 2, 1863, as artillery harness, consisted of ten complete sets of russet artillery harness for four horses; that the articles specified in the report of June 2, 1863, as buckles, consisted of 553 gross of rings and 705 gross of buckles for harness; that the articles specified in the report of June 2, 1863, as artillery harness and chains, consisted of 20 complete sets of russet artillery harness for four horses, and 258 heavy russet artillery halters and 600 galvanized halter chains; that the articles specified in the report of June 2, 1863, as marked "Burchard & Co., successors, Matamoras," and as consisting of drugs and quinine, were 2,300 ounces of quinine, 245 pounds of chloroform, 1,000 pounds of calomel, and a quantity of opium, morphine, ether, and other drugs; and that the 9 rolls of bagging, specified in the report of June 2, 1863, consisted of 1,145 yards of bagging. The report of November 19, 1863, also shows that the packages on board, marked "Burchard & Co., successors," contained, besides the said drugs, tea, garden seeds, dry goods, and blankets. Only one invoice was found on board of any of the articles contained in the packages marked "Burchard & Co., successors." That invoice is annexed to the report of June 2, 1863.

An examination of the report of November 19, 1863, shows that the articles covered by the bills of lading indorsed to Almond were valued by the prize commissioners at \$55,238 98; those covered by the bills of lading indorsed to Redgate & Co., at \$7,082 53; those covered by the bills of lading indorsed to Redgate, at \$1,875 30; those covered by the bill of lading indorsed to Redgate and Almond, at \$5,010; those covered by the bills of lading indorsed to Bowden, at \$113,130 77; those covered by the bills of lading indorsed to Captain Jarman, at \$12,380 65; those covered by the bills of lading indorsed in blank, at \$29,729 61, (of which \$8,725 84 was the value of the shipments by Redgate, and \$10,568 06 the value of the shipments by J. Spence;) those covered by the bills of lading not indorsed, and of which there were no duplicates, at \$29,945 72; and those shipped by Captain Jarman, and covered by a bill of lading not indorsed, at \$2,551 81.

Among the documents found on board of the Peterhoff was a copy of a letter, dated London, October 27, 1863, signed "James I. Bennett

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& Wake," and addressed to Messrs. Pile, Spence & Co.; and a copy of a reply to that letter, dated the same day, signed "Pile, Spence & Co.," and addressed to Messrs. James I. Bennett & Wake; and a copy of a letter, dated London, January 17, 1863, signed "James I. Bennett & Wake," and addressed to Messrs. Pile, Spence & Co.\* These three letters relate to the voyage of the Peterhoff, and the respective interests of the writers of the letters in the freight to be earned by her, and show that she was to bring home a cargo of cotton from the Rio Grande. I shall have occasion hereafter to refer particularly to the contents of these letters. They constitute the only agreement, in the nature of a charter-party of the vessel, that was found on board.

There was also found on board a printed form of a policy of insurance, in which the names of "Robinson & Fleming, No. 21 Austin Friars, London," are printed as insurers. The blanks for writing, in the form, are filled in as insuring the Peterhoff for £10,000 on her hull, and for £5,000 on her machinery, "average payable on each valuation, as if separately insured, or on the whole, and general average, as per foreign statement, if required by the assured," "from London to Matamoras, while there, and thence to Liverpool, including collision clause, as per printed slip annexed," at the rate of five guineas per cent. On the margin of the form are printed the words, "warranted free from capture, seizure, detention, and all consequences of hostilities." There is no signature to the instrument, although it contains the following, in print: "In witness whereof, we, the assurers, have subscribed our names, and sums assured, in London." The printed form of a bill, at the foot of the copy of the policy, intended to be filled up with items of the charges for the premium and the policy, is not filled up.

There was also found on board a letter, dated "Royal Mail Steam Packet Company, No. 55 Moorgate street, London, January 8, 1863," signed "Rd. T. Reep, Sec'y," and addressed to "Capt'n Cooper, R. N., Jamaica," which says: "This letter will be shown to you by Capt'n S. Jarman, of the screw steamship Peterhoff, who, in the event of his not being able to procure a supply of coal necessary for his ship from merchants in your port, is to be accommodated from the company's stock under your charge, of, say, not exceeding 250 tons, at 34s. 4d. per ton, either on his out or home voyage, both or either. You will be good enough, in such case, to take the capt'n's drafts, at three days' sight, payable in London, on his owners, Messrs. Pile, Spence & Co., and forward the same to 55 Moorgate street, at your earliest convenience."

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One of the papers found on board was a bill or invoice, reading thus: "London, 30 Dec., 1862. Messrs. Pile, Spence & Co., per Peterhoff, bot. of Ford, Curtis & Curtis, 10 bales gunny cloth, 1,559 yds.; 13 bales stout cotton wrapping, 1,998 yds.; freight, £47 4s. 6d., marked 'Peterhoff, owner.'" On the same page with that bill is another, reading thus: "Manchester, Dec. 24, 1862. Messrs. Pile, Spence & Co. bot. of J. Bowes, 1 hydraulic cotton press, with ram to lift 4 feet, and set of pumps complete; 2 birch railway boxes, bound with iron, and fitted up with wheels, stillages, rails, &c." There was also found on board sundry correspondence in reference to this cotton press, and some drawings of cotton presses, to which I shall refer hereafter more particularly.

The cargo-books, four in number, give, under different headings, the dates of putting the packages on board, their marks and numbers, and solid contents and positions in the vessel. They are generally stated to be merely cases, bales, casks, and trunks, the contents not being specified, except in the instances of bellows, coils of rope, machinery, round bars in a bundle, bars of iron, machinery bars, packages of leather, medical comforts, samples, shovels, box for cotton press, iron hoops, anvils, casks of nails, bars and bundles of wrought steel, kegs of nails, and bags of nails.

The log-book purports, on its title-page, to be for a voyage from London to Matamoras, and to have been kept by H. Bound. It commences on the 30th of November, 1862, and details a voyage of the vessel from Liverpool to London, she having left Liverpool on that day, and arrived at London on the 6th of December following. The log shows that she remained lying at London from the 6th of December until the 7th of January following, and that, during that time, she was scraped, cleaned, and painted, and her decks caulked; that she commenced taking in cargo on the 24th of December, and finished taking it in on the 7th of January following; that she left London on the 7th of January, and arrived in Plymouth Sound on the 9th of January, in the evening; that on the 10th of January she proceeded further up the sound, and took in fuel; that she left Plymouth harbor on the 18th of January, in the morning, and came to anchor in Falmouth harbor on the 19th of January, in the morning; that she left Falmouth harbor and proceeded on her voyage on the 27th of January, in the afternoon; that, on the 20th of February, at 3 a. m., she sighted the Virgin islands, and, at 8 a. m., was brought to by the "federal war-steamer Alabama" firing two shots across her bows, and,



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at 8.15 a. m., was boarded by a "federal officer," and had her papers overhauled, and, at 8.45 a. m., proceeded towards St. Thomas, and at 9.45 a. m., came to anchor in the harbor of St. Thomas; that she remained at St. Thomas, where she took in coal, until the 25th of February, three-quarters of an hour after noon, when she proceeded out of the harbor; that, at 2.20 p. m., she was brought to by the United States steamer Vanderbilt; that, at 2.30 p. m., an officer came on board; that, at 2.55 p. m., the officer, having overhauled her papers, left and returned on board the Vanderbilt, demanding that the Peterhoff should remain stationary; that, at 3.30 p. m., the officer returned on board and demanded that Captain Jarman should take his papers on board of the Vanderbilt, "which he refused to do, being in charge of her Majesty's mails;" that the officer then left, threatening to send an armed crew on board; that, at 4 p. m., she was boarded by a lieutenant, a master's mate, an engineer, and 21 armed men from the Vanderbilt, who took charge of her against the protests of the captain and passengers; that, at 8.50 p. m., she was boarded again by another officer, who demanded her papers to take on board the Vanderbilt, "which was refused, at the same time full liberty being given by Captain Jarman for the papers to be overhauled on board, or the ship searched;" that, at 9 p. m., a lieutenant, a master's mate, two engineers, and an extra file of marines, &c., "took charge of the Peterhoff, telling Captain Jarman that he was not to consider himself any longer in charge;" that all the crew of the Peterhoff were then taken on board of the Vanderbilt, with the exception of the master, chief officer, second engineer, steward, cook, one boy, and the passengers; that, on the next day, the 26th of February, the Peterhoff proceeded to the westward, and, passing within sight of St. Domingo and Jamaica, came to anchor in the harbor of Key West on the 7th of March, in the afternoon. The log-book ends on the 9th of March, while the vessel was lying at Key West.

I will now refer to the most material portions of the depositions taken *in preparatorio*:

Captain Jarman says that the Peterhoff was seized on the 25th of February, 1863, off the harbor of St. Thomas, and taken thence to Key West, and from thence to New York, and that he does not know why she was seized. Bound, the first officer, testifies to the same effect. Harris, the second mate, says that the capture was made off the island of St. Thomas, three or four miles from the shore, and that he believes the vessel was seized on suspicion. Tregidgo, the third officer, says that the capture was made about four miles off St. Thomas,

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of the merchant vessel, by a subordinate officer from the cruiser, as to excite suspicion concerning their regularity, is, on the part of the neutral master, a resistance to the right of visitation and search, even though he offers his papers for examination on board of his own vessel, and his vessel for search.

Papers on board of the vessel were destroyed at the time of her capture, some by being burned and some by being thrown overboard by order of the master.

False evidence of the master as to the destruction of the papers.

The spoliation of papers on board of a neutral vessel, when overhauled by a belligerent cruiser, is of itself a strong circumstance of suspicion.

In England and in the United States spoliation of papers is not held to furnish of itself sufficient ground for condemnation, but to be a circumstance open to explanation; yet, if the explanation be not prompt or frank, or be weak and futile, if the case labors under heavy suspicions, or if there be a vehement presumption of bad faith or gross prevarication, it is ground for the denial of further proof, and condemnation ensues from defects in the evidence, which the party is not permitted to supply.

Deficiencies in the manifest in respect to the contraband articles on board.

The absence of invoices as to some of the contraband articles.

Defects in the bills of lading.

Character and quantity of the contraband portion of the cargo.

Character and status of some of the passengers on the vessel.

Notwithstanding the ostensible destination of the vessel to neutral waters at the mouth of the Rio Grande, the evidence establishes the actual hostile destination of the cargo.

All the claimants of the vessel and cargo had on board contraband articles, which were destined to be delivered directly, or indirectly by trans-shipment, into the enemy's country, and for the use of the enemy.

Where contraband articles, destined for the use of the enemy, are found on board of a vessel, all other goods on board of that vessel belonging to the owner of the contraband articles, even those goods which are innocent, must share the fate of the contraband goods.

Whether the English doctrine is sound that contraband goods are liable to capture, even though destined to a neutral port, if found entering waters common to both the neutral port and a hostile port, *quere*.

Where the vessel belongs to the owner of the contraband articles, or where there are circumstances of fraud as to the papers, or the destination of the vessel or the cargo, and thus an attempt, under colorable appearances, to defeat the rights of a belligerent, the vessel which carries the contraband articles will be condemned, and the penalty on the vessel will not be limited merely to a loss of freight and expenses.

So, too, the vessel will be condemned not only where her owner is privy to the carriage of contraband, but where the master of the vessel, as the agent of such owner, interposes so actively in the fraud as to consent to give additional color to it by sailing with false papers.

So, also, if the owner of a vessel places it under the control of a master who permits it to carry, under false papers, contraband goods ostensibly destined to a neutral port, but in reality going to the country of the enemy, he must sustain the consequence of such misconduct on the part of his agent.

A neutral owner of a vessel is, as a general rule, held responsible for all the acts of the master of his vessel committed in violation of the rights of a belligerent.

A master is, in time of war, bound to know the contents of his cargo, and cannot be permitted to aver his ignorance of the contents of contraband packages on board of his vessel.

From the moment a vessel, having on board contraband articles which have a destination to the enemy's country, leaves her port of departure, she may be legally captured, and it is not necessary to wait until the goods are actually endeavoring to enter the enemy's country, the penalty attaching the moment the illegal transportation commences.

(Before BETTS, J., decided July 30, 1863, but this opinion delivered subsequently.)

BETTS, J.: The steamer Peterhoff was captured, as lawful prize of war, on the 25th of February, 1863, by the United States steamer

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was owned by J. Spence, of London, and that he was appointed to the command by Mr. Joseph Spence, the owner, in London; that he has known the Peterhoff since about the 10th of December, 1862; and that she was delivered to him by Mr. Spence, in London. Tregidgo says that he has known the Peterhoff since the 18th of October, 1862, when he first saw her coming into Liverpool on her last voyage from Nassau. Reed says that there was no resistance made to the capture, "only the captain would not allow his papers to go out of the ship."

Captain Jarman says that he had a small speculation of his own on board the Peterhoff, "a few stores and other property, as captains usually have;" that he had no interest in the vessel; that he had no other interest in the cargo; that his property paid no freight, and had nothing to do with the ship's cargo; that none of the ship's company had any interest in the vessel or the ship's cargo; and that the value of his property on board was about £1,000, at what it cost in London and St. Thomas. Bowden says that he was a passenger on board at the time of the capture, and held bills of lading for a part of the cargo; that he does not know who owned the remainder thereof; and that the value of his share of the shipment was between twenty and twenty-five thousand pounds sterling at London. Almond says that he owned in his own right a portion of the cargo on board the vessel, which, at cost prices, was valued at about twelve thousand pounds sterling; that this portion of the cargo consisted of men's and women's boots and shoes, calicoes, cotton, prints, shirts, flannels, woollen hose, horseshoes, and nails, felt hats, "not military, but civilians' hats," pins, and needles, one case of saddlers' tools and some shoemakers' tools; that he does not remember the names of any other articles; that what he had was a general assortment; that he had no arms, powder, shot, or any military arms or clothing on board the vessel, except one rifle and five revolvers, and some two or three hundred rounds of ammunition, which was all contained in a small tin box; that two of the revolvers were intended for the use of Redgate, and the rest for his own use; that he had also a small case of quinine, containing one hundred ounces, and a small portmanteau, also containing medicines and drugs in small quantities; that he intended to sell the same; that the portion of the cargo which he owned was entirely distinct and separate from the other cargo on board, and that the only other person in any way interested therein was his father, his uncle, and himself; that his father, William Almond, and his uncle, George Almond, both reside in London, and are partners together in the shipping business

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there, under the firm name of George & William Almond; that he is not interested in the firm, but shares with them equally in the profits resulting from the sale of the portion of the cargo owned by all of them; that he furnished no money to purchase the goods in question, but they were purchased by his uncle and father; and that no other person on board of the vessel has any control or power over the goods in question but himself. Redgate says that he was on board as a passenger; that he had an interest in some of the cargo, and that a large portion of the cargo was also consigned to him; that he supposes he had an interest in the cargo to the amount of from fifteen to twenty thousand pounds sterling; and that this includes what was consigned to him. Reed says that the captain took on board some of the cargo at St. Thomas.

Captain Jarman says that the vessel was bound to the port of Matamoras; that the voyage began at London, and was to have ended in England—at Liverpool or London; that she carried a general cargo of merchandise, which was put on board in December, 1862, and January, 1863; and that she had no goods which he considers contraband of war. Bound says that the vessel was bound to Matamoras when captured; that the cargo consisted of assorted goods, partly of nails, iron, drugs, tin, and general cases of merchandise; and that he knows of no contraband goods on board. Harris says that they were bound to Matamoras; that the cargo was a largely assorted cargo of merchandise, in cases, bales, and trunks; and that he does not know of what it consisted. Tregidgo says that the vessel was bound to Matamoras; that she carried a general assorted cargo, and took in about ninety or one hundred cases of spirits at St. Thomas; and that there were some contraband goods on board, such as boots and shoes, and army cloth and medicines. Bowden says that the voyage commenced at London, in January, 1863, thence to Plymouth, for passengers, thence to Falmouth, under stress of weather; that the vessel sailed from Falmouth, on the 27th of January, for Matamoras, with liberty to call at St. Thomas or Jamaica for coal or other purposes connected with the voyage; that she stopped at St. Thomas from the 20th to the 25th of February; that, on the morning of the 20th of February, previous to entering St. Thomas, she was overhauled by the United States steamer Alabama, and her papers were examined and passed; that she was bound for Matamoras, and was to return from that place to England; that, when she left England, she had a cargo of general merchandise, consisting of boots and shoes, blankets and hosiery; that he had

heard there were also printed calicoes, nails, and other articles of that kind on board; that there were no goods contraband of war or prohibited by law, to the best of his knowledge and belief; and that some articles, which he thinks were ship's stores, were taken on at St. Thomas. Almond says that the vessel left London, bound for Matamoras, to stop at St. Thomas, for coals; that she had nothing on board contraband of war or prohibited by law, to his knowledge; that, after leaving London, she stopped at Plymouth, and he went on board there; that she lay there some seven or eight days, and left Plymouth on or about January 20, and had to put back to Falmouth on account of contrary winds, where she remained until the 27th of January, when she proceeded to St. Thomas, arriving there about February 20, and there coaled; and that she remained there till the 25th of February, and left there about twelve and a half o'clock p. m. of that day, and was followed out by the Vanderbilt and captured about two p. m., although possession by the prize crew was not taken until about nine and a half p. m. Redgate says that the vessel was bound to Matamoras, and was cleared for that port, and that he obtained certificates from the Mexican consul to his bills of lading; that she had on board a cargo of general merchandise, consisting of woollen goods, fancy goods, boots and shoes, nails, tin, and cordage; that these are all that he recollects; that he was there when she was taking in cargo; and that she had no goods on board which were contraband of war, or otherwise prohibited by law. All the other witnesses, except Reed, say that the vessel was bound for Matamoras, and all, except Duffay and Campbell, say that they know of no goods on board contraband of war. Murphy, chief engineer, says that there were some blacksmiths' tools and nails. Murphy, assistant engineer, says that the cargo was general merchandise. Webber says that there were some kegs of nails. Duffay says that he saw some smiths' anvils and bellows on board. Diamond says that she had an assorted cargo. Reed says that they were bound for Matamoras, or any port of North or South America; that the shipping master told this to him and to the greater part of the crew when they shipped in London; and that the cargo consisted of assorted goods.

Captain Jarman says that the vessel had the ordinary ship's papers only; that she sailed from London and touched at Plymouth and Falmouth in stress of weather, and at St. Thomas for coal; that her previous voyage, so far as he knows, was from England to Nassau and back to Liverpool; that on that voyage she must have had some

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cotton; and that she cleared from London on the 6th or 7th of January, and left Falmouth on the 27th of January. Harris says that they stopped at Plymouth to take on passengers. Tregidgo says that her previous voyage was to Nassau; that he does not know what she took out; and that she brought back cotton. Bowden says that he has heard that the vessel had made one voyage to Nassau. Almond says that the vessel had only carried one cargo before the present one; that that was a cargo of coals, which she delivered at Nassau, and returned to Liverpool with a cargo of cotton, which was put on board at Nassau; and that he heard this from Captain Jarman. Diamond says that the last voyage of the vessel was to Nassau and direct back to Liverpool, calling for coal at Halifax; that the last cargo was general, consisting of tea, coffee, liquors, &c., and was all sold and landed at Nassau; and that it was put on board at Liverpool, England, partly by a man named Dobson, in August, 1862.

Captain Jarman says that the present cargo of the vessel is assorted, and consists of general merchandise; that he knows it consists of some kegs of nails, a little iron, cases and bales, which he supposes are dry goods, some large bellows, and a few anvils; and that he cannot specify any further. Bound says that the cargo was of general merchandise, but that he does not know particular quantities and qualities. Harris says that the cargo was a largely assorted general cargo, in cases, bales, trunks, &c., and that he does not know what was in them, nor anything about the different species or quantities of cargo. Tregidgo says that the cargo consisted of medicines, about five hundred boxes of tin plates, blacksmiths' bellows and anvils, cotton presses, boots and shoes, bar iron, army clothing, kegs of nails, spades and shovels, carpenters' tools, spirits, some heavy casks, iron work, and bales and cases. Almond says that the portion of the cargo other than that in which he is interested consisted, as he understood, of a general assorted cargo of merchandise, of a kind and character similar to the portion in which he is interested. Redgate says that he cannot set forth the quantity or different species of the cargo more fully than he has done in his answers to previous interrogatories. "The other witnesses, all of them, say either that the cargo was assorted merchandise or that they do not know of what it consisted.

Captain Jarman says that the vessel is owned by Joseph Spence, of London; that the cargo is owned by merchants in London, repre-

sented by three passengers, who were on board; that he represents the owner's share of the cargo, that is, the share of Spence & Co.; that they have a share of not above one-eighth, he supposes; that he knows, by the bills of lading, who the owners are; that he thinks it is all represented by his three passengers and himself, except a few parcels or cases on board, which are covered by a bill of lading indorsed to Burchard & Co., of Matamoras; that they are all English owners, except the last named, and he does not know what countrymen they are; and that the English owners, he thinks, all reside in London, and he supposes they are all English subjects. Bowden says that he believes the entire cargo was owned by the shippers, as they appear upon the bills of lading, or the parties in Matamoras, to whom they were consigned; that he held bills of lading for boots and shoes, hosiery, shirts, blankets, cloths, bunting, and other articles, from parties whose names he gives, and who, he says, were the owners of the goods, and are, as he believes, all British subjects, doing business in England; that he intended to do business in Matamoras as a commission merchant; and that these goods were consigned to him for sale. Almond says that Bennett and Wake were agents for the vessel. Redgate says that the goods on board were owned by a great many persons, the names of some of whom he gives; and that they all live in England.

Captain Jarman says that there was a bill of sale of the vessel to J. Spence, which he saw the day he took charge of her; that he does not know who sold her; that he took a new register of her on or about the 10th or 12th of December, 1862; that this sale was made in London on or about that date; and that he thinks the sale was made by Mr. Pearson or Parsons. Tregidgo says that the vessel was bought by her present owners at a mortgagee's sale, which owners he states to be Messrs. Pile, Spence & Co.

Captain Jarman says that he thinks the names of the laders and owners of the cargo are all contained in the bills of lading which were found on board; that, so far as he knows, all the cargo is for the real account, risk, and benefit of those who appear in the bills of lading to be the owners. Bowden says that the goods were to be delivered at Matamoras, for the account, risk, and benefit of the shippers of the same. Almond says that the laders of the cargo in which he is interested were his father and uncle; that he and they had no consignees, as he was authorized to select his own consignee, on arriving at Matamoras; that this authority was verbal and not in writing;

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that these goods were to be delivered at Matamoras for the real account, risk, or benefit of his father, his uncle, and himself; that they all owned the same in equal shares; that it was his intention to settle in Matamoras and sell the goods in question himself; and that he had never been there. Redgate says that part of the cargo was consigned to him as a merchant in Matamoras for some eighteen months then past. Webber says that some cases were taken on board for the captain, at St. Thomas, some of which contained liquors.

Captain Jarman says that he thinks there are five and twenty or thirty bills of lading; and that none were false or colorable, and none were different from those found on board at the time of the capture, to his knowledge. Almond says that three sets of bills of lading, consisting of four in each set, were signed for the cargo owned by himself and partners; and that he gave up four bills of lading to the prize officer. Redgate says that he does not know exactly how many bills of lading were signed for the goods belonging to, or consigned to him, but he thinks seven or eight.

Captain Jarman says that he has no other papers, and had none relating to the vessel and cargo, except what he delivered up at the time of the capture.

Captain Jarman says that there was a charter-party, or a copy, on board with the papers at the time of the capture, signed by Spence, and Bennett & Wake. Bound says that the capture took place about three miles from St. Thomas, and that he thinks there was a charter-party signed. Harris says that the capture took place in sight of St. Thomas's island. Tregidgo says that the vessel was captured about four miles to the southward of St. Thomas. Almond says that the capture was made a few miles off the coast of St. Thomas. Murphy, first assistant engineer, says that the capture was made just outside the harbor of St. Thomas. Webber says that the vessel was captured near the harbor of St. Thomas.

Captain Jarman says that the prize commissioners have all the papers that were on board the vessel at her last clearing port; that none connected with the voyage, the ship or the cargo, were destroyed; that he tore up some letters from his wife and father at the time of the capture; that none others were destroyed, to his knowledge, by any person; and that none were concealed, or in any way disposed of, to his knowledge. Bound says that the ship had her usual papers, clearance, register, &c., all of which were on board when captured,



and that none were destroyed or concealed in any way. Harris says that he does not know what papers were on board the vessel when she left London; and that he threw overboard, by order of the captain, a square paper package, the contents of which he does not know, about the time of the capture, after the first boarding by the officers of the Vanderbilt, and before the prize crew took possession, he thinks, but he cannot say precisely at what time. He says: "This paper package was handed me by the captain, or he told me to get it out of the cabin, which I did. While I had it in my possession, I handed it to Campbell, or some other seaman, and told him to hold it while I was busy, and he did. He afterwards gave it back to me, and I then threw it overboard. I told the seaman who held it, that in case a boat from the Vanderbilt came alongside, not to let it be seen. The captain told me not to let any one see it. The captain had given me this same paper parcel once before, at the time the Alabama stopped us, before we were boarded by the Alabama. He told me, at that time, to keep this parcel, and throw it overboard if he told me to, or, if he made a sign to me, then to throw it over. As I did not throw it overboard then, I gave it back to the captain. The Alabama was a United States war steamer of some kind, which boarded us before we went into St. Thomas, on the same day that we went into St. Thomas. I think this was four or five days before we were captured." Tregidgo says: "I don't know what papers were on board of the steamer when she sailed, except the English mail for Matamoras. When we were first boarded by the Alabama, going into St. Thomas, the captain sent for the second officer, and gave him a packet, with instructions to keep it in the forepart of the ship, and if he, the captain, made him a sign, he was to throw the package overboard, and if the boarding officer was between the captain and second officer, so that a sign could not be made, he was to use his own discretion. On the boarding officer returning to the Alabama, the packet was taken aft to the captain. On being first boarded from the Vanderbilt, exactly the same proceedings were carried out, and the packet was again returned to the captain. On the captain perceiving the officer again coming from the Vanderbilt, he gave me the packet, and told me to keep out of the way with it. He then said, 'Never mind, fetch the second officer;' and the packet was again given to him—the second officer, Mr. Harris. On the captain observing a prize crew coming from the Vanderbilt, he called the second officer aft, and, after sending for Mr. Mohl, one of the passengers, to witness the necessity of throw-

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ing the packet overboard, he then ordered the second officer to throw it overboard from a part of the ship where it would not be observed from the Vanderbilt, which he did. While the packet was in the forepart of the vessel, a man named Campbell had it, concealing it. I do not know what the packet contained. I heard the captain speak of it as containing despatches. He called it despatches. There were some written papers sent to the stoker to be burned. They were burned by George Duffy, fireman. The packet was sewed up in canvas, and weighted with lead, so that it would sink. Mr. Mohl appeared very much depressed at the necessity of throwing over the packet." Bowden says that no papers of any kind were burned, thrown overboard, destroyed, cancelled, or attempted to be concealed, to the best of his knowledge, information or belief. Almond says: "I don't know what papers were on board the vessel when she left St. Thomas. The same day we arrived at St. Thomas, Captain Jarman ordered a package to be destroyed. It was in the charge of Mr. Mohl, passenger. He gave it up, at the captain's request, to be destroyed. I suppose it was destroyed. I don't know for what reason it was so destroyed. I don't know what the package contained. We were in sight of St. Thomas at the time. I don't remember whether or not it was destroyed before or after we were hailed by the United States steamer Alabama. We were hailed by that vessel the morning of the day we reached St. Thomas. We entered about half-past ten o'clock in the morning. The package was very small. I never saw it but once, and then it was in Mr. Mohl's possession. I never knew what it contained. It was destroyed because Mr. Mohl objected to its being opened. At Falmouth, Captain Jarman said we must deliver up any and all sealed packages, as he should not carry any. Mr. Mohl had the one in question, but did not give it up at the time, and it was not given up until the morning of the day of our arrival at St. Thomas, when it was destroyed, as I have above stated. Nothing else was destroyed or concealed, to my knowledge." Redgate says that he had no letters, and no instructions, as to the mode of disposing of the cargo; that he does not know that any person burned, tore, threw overboard, destroyed, or cancelled, or attempted to conceal, any papers on board. Murphy, assistant engineer, says that he was told by the second steward that there were some papers destroyed by one of the stokers, named George Duffy; that some were thrown overboard by the second mate; and that the first steward, Webber, knew of the fact. Webber says: "I heard several of the crew say that some

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papers had been thrown overboard by Mr. Harris, the second mate, just before the Alabama boarded us. I saw some newspapers burned by Duffy, a fireman. They belonged to a passenger, named Mohl, who gave them to me to be burned, and I gave them to Duffy and told him to burn them. I don't know why he wanted them burned. I saw the packet that Mr. Harris was said to have thrown overboard. It looked like a brown paper parcel. I did not see him throw it over." Duffay says: "The steward of the ship gave me a package of papers, or something that was printed. It looked like a book that had been 'tossed from a great many hands' He told me to burn it, which I did. I don't know the steward's name, nor the contents of the package or book which I burned, nor anything about it, except what I have stated. This was about the time the Vanderbilt captured us. I cannot say exactly whether it was before or after the capture. We were outside of the harbor of St. Thomas, after we had been in. I was down in the engine-room, and, as I came up on deck, the steward gave me this package, and told me to burn it. He did not say why, nor who it belonged to, nor anything more than to burn it." Reed says: "When we first saw the United States gunboat, the Alabama, which boarded us on the 20th day of February, before we went into St. Thomas, the captain sent Mr. Harris, the second officer, forward with a box of papers, which papers I saw the captain put into the box, and he told Mr. Harris to put something into the box to sink it, and, on the raising of his finger, to let it go overboard, (the box and papers, I mean;) but, as the officer did not search the ship, he took the box back again and gave it to the captain. When we sighted the Vanderbilt, the captain again told Mr. Harris, the second officer, to take the box forward again, and be sure to put something into it to sink it; and, after the first boat which boarded us from the Vanderbilt was returning to the Vanderbilt, the captain told Mr. Harris that if the boat from the Vanderbilt returned again to our ship, then to throw the box overboard, which Mr. Harris did. I saw it go overboard myself. He then sent the steward, Thomas Webber, with another bundle of papers, to George Duffay, the fireman, to be put into the furnace, which was done; and, when the steward returned, the captain gave him two papers to hide, and, in case the captain was taken out of the ship, then the steward was told to destroy them, and he made a motion with his fingers as if to tear them. This was in the pantry, and I was alongside of the steward at the time, and the captain was opposite to both of us. I do not know whether the steward did de-

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stroy them or not." Campbell says: "The second mate gave me a sealed parcel, wrapped in brown paper. He told me to take care of it, and, if I was signalled by either himself or the captain, I was to let them drop overboard. I was in the forward part of the ship. The boarding officer was at that time on board from the United States steamer Alabama. After the officer left, I gave the parcel back to the second mate. Afterwards, when the prize crew came off from the Vanderbilt, I saw the second mate give the same parcel to the captain of the Peterhoff, and I saw the captain drop them overboard from the starboard gangway. The package was heavy, but I do not know what was in it."

Captain Jarman says that he knew of the blockade of the principal ports of Charleston, the Mississippi, &c., before he left England, and knew about the war in America. The testimony of all the witnesses is, that the officers, crew, and passengers knew of the war, and of the blockade of the enemy's ports, before leaving England.

Captain Jarman says: "I was spoken and boarded by the United States ship Alabama on this voyage. My papers were examined, but my papers were not indorsed. I was allowed to proceed. I was spoken by the Alabama about two miles from St. John's island, and seven from the harbor of St. Thomas, on the 20th of February last."

Harris says that, on her previous voyage, the vessel was under another owner, Mr. Pearson, of Hull. Duffay says: "When I shipped, I refused to go if the vessel was to run the blockade. This question arose between the captain and me at the Sailors' Home, where I shipped. I told him I did not wish him to take me to run the blockade. He said it was more than he dare do, to run a blockade, as he belonged to the naval reserve."

Captain Jarman says that he has sustained considerable loss by the seizure; and that, in case his property should not be restored, he will sustain considerable loss. Bowden says that he has sustained a serious loss by the capture, in time and business, and in other respects. Almond says that he has sustained great loss by the capture. Redgate says: "I have sustained an injury by the seizure of this vessel. I compute my loss in this way—imprisonment on board of the vessel, loss of time, loss sustained in business, loss by being deprived of performing my duty as agent of Lloyd's, at Matamoras, and for other wrongs and privations."

Captain Jarman says that the vessel was insured, and he believes the cargo was. Bound says that the vessel was insured partly in Lon-

don and Paris. Bowden says that the part of the cargo which he represented was insured or partially insured. Almond says that his portion of the cargo was insured for £11,500 in Lloyd's for the voyage from London to Matamoras, with liberty to stop at St. Thomas or Jamaica; that the premium was under £5, and he thinks about 97s.; and that it was insured by his father and uncle with Bennett & Wake, brokers. Redgate says that the goods, as far as he was concerned, were insured; that he understands that the vessel was insured also; that the insurance was from London to Matamoras, touching at St. Thomas for coal; that he does not recollect at what premium; and that some of the insurances were effected in London and some in Paris.

Captain Jarman says that if he had arrived at his destined port, the property would have become the property of the consignees—that is, for the time being; and that the property was represented by the passengers who were on board. He says that there was a small quantity of tea on board. Tregidgo says: "I heard Mr. Eyck, one of the passengers, say that the cargo was to go across the river, from Matamoras into Texas. I am very confident of this." Bowden says that, if they had arrived at Matamoras, the part of the cargo which he represented would have taken the chance of the market for its sale; and that the proceeds were to be returned. Almond says that, on arriving at Matamoras, he was to hold the cargo, and take his chance in the market for its sale. Redgate says that, if the vessel had arrived at Matamoras, the cargo would have belonged or would have been at the disposal of the persons holding the bills of lading, and that the laders or owners were to take the chance of the market.

Captain Jarman says that he knows of no papers of any kind relating to the vessel and cargo in any country, except those delivered to the captors; and that no papers were delivered out of the vessel in any way whatever, to his knowledge. Bowden says that the prize-master, at the time of the capture, took away all the papers relating to the vessel and cargo. Almond says that he does not know of any other papers than those received by the prize officer. He says: "All the vessel's papers, and all the papers relating to the cargo, were delivered by Captain Jarman and by ourselves to the prize officer, acting master Lewis, of the Vanderbilt, on the day of capture. I delivered four bills of lading, set of invoices for the entire lot of my goods, and the Mexican consul's certificate of proper shipment of goods, to the officer. These were all the papers I had relating to the cargo." Redgate says: "There are not in any country besides the United States,

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nor on board of any vessel, any bills of lading, invoices, letters, instruments, papers, or documents relative to the vessel or cargo, that I am aware of; none that I know or heard of." He says: "There were no papers delivered out of, or carried away in any manner whatever from the vessel that I know of. I never heard that any had been, except those that were taken by the prize officer."

Captain Jarman says: "There were eight passengers on board when I left London or Plymouth. Their names are as follows: Samuel or S. Redgate, Robert Bowden, Wellesly Almond, Mr. Mohl, Mr. Edwards, Mr. Heyck, Mr. Ellsworth. The last four left me while I was at Key West, having no interest in the cargo. One other left at Falmouth, he having joined the ship at Plymouth. The three first named are in charge of a large portion of the cargo, and are now here. They were taken on board in London or Plymouth, and were destined to Matamoras. None of the eight passengers were citizens of the United States, to my knowledge. Possibly Mr. Edwards may have been." Bound says: "Bowden, Almond, Redgate, Edwards, H. Heyck, Ellsworth, Moyles, were passengers on the vessel at the capture. Redgate, Edwards, Heyck, and Moyles are from Mexico; the others from England. All are merchants. They came on board at London and Plymouth. Bowden, Redgate, and Almond were, I think, interested in the cargo; the others not, I believe. They were all going to Matamoras. No citizen of the United States was on board nor any citizen of any of the States at war with the United States." Tregidgo says: "There were seven passengers on board. Their names were Bowden, Almond, Ellsworth, Eyck, Mohl, Edwards, Redgate. Mohl and Redgate told me they were residents of Texas. Eyck also belongs to Texas. He told me so. There was a Mr. Bisbie, who came on board in Plymouth, and left the ship at Falmouth. I think he was an army officer, as he had his sword with him. I think he was an American. The passengers were going to Matamoras. Edwards told me he must be back into the southern States by the first of March." Bowden says: "There were seven passengers on board. All were bound from England to Matamoras. They were myself, Messrs. Redgate, Ellsworth, Mohl, Edwards, Heyck, and Almond." Almond says that there were seven passengers on board, S. J. Redgate, R. Bowden, Mr. Ellsworth, Mr. Mohl, Mr. Edwards, Mr. Heyck, and himself; that Mr. Mohl and Mr. Heyck were Germans, as he believes; that the remainder were Englishmen with the exception of Mr. Edwards, who told him he was an American; and that they were all bound to Mat-

amoras. Redgate says that there were seven passengers on board, including himself, Bowden and Almond; that the others were Mr Edwards, Mr. Hyack, Mr. Mowl, and Mr. Ellsworth; that he thinks Mr. Edwards was an American; that Mr. Mowl and Mr. Hyack were Germans, and Mr. Ellsworth a Scotchman, who was bound to Matamoras, as his (Redgate's) clerk; that they were young men; and that he does not know that they had any families. Webber says that there were seven or eight passengers on board when they left Plymouth; that one, by the name of Bisby or Bigbee, left at Falmouth; that three or four left at Key West; that their names were Mr. Ellsworth, Mr. Hyeck, Mr. Edwards, Mr. Mole. Reed says that there were seven passengers on board, and that one joined at Plymouth and left at Falmouth; that his name was Colonel Bigsby; that he was an officer in the confederate army; that one of the passengers was Mr. Redgate, and the others Mr. Almond, Mr. Mole, Mr. Hyeck, Mr. Edwards, Mr. Ellsworth, Mr. Bowden; that they were all taken on board at Plymouth, except Mr. Hyeck and Mr. Ellsworth, who were taken on board at London; that they were going to Matamoras; that they said that from there they were going home; that they did not say where their home was, but that he heard them say that they could not get home because their place was blockaded; that Mr. Mole burned some papers when the Alabama boarded them; and that it was note paper, with the "confederate flag" upon it.

Captain Jarman says that all the papers found on board are true and fair, to the best of his knowledge and belief; that none are false or colorable, to the best of his knowledge; that there were no other papers of any kind, except as he has already stated; and that he has signed no papers concerning the vessel or cargo since her capture. Bowden says that all the papers found on board are true and fair, to the best of his belief; and that he had a passport for Matamoras, Mexico, through Earl Russell. Almond says that all the papers found on board are true and fair, to the best of his knowledge; that he had a passport from the English government, viséd by the Mexican consul at London, to go to Mexico, and travel there, and has it now in his possession. Redgate says: "As far as concerns myself, all the papers which I had were entirely true and fair, and, as far as I know or believe; all of the other papers were so, and none of them were false or colorable, nor do I know of any matter or circumstance to affect their credit. I have not made any oath or affirmation in order to obtain any passport or other clearance. I had no passport or letter of safe con-

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duct. I do not know whether the others had or not. I have written letters to the British consul at Key West, and also to Lloyd's, giving an account of the capture. I have no copies of such letters."

Captain Jarman says that he was steering, when captured, towards Matamoras; that his course was not altered upon the appearance of the capturing vessel; that the course of the Peterhoff was at all times directed to her port of destination, as shown on her papers; and that her course was not altered at any time to any port or place, except to such ports as he had already stated. The testimony of all the other witnesses is to the same purport.

Captain Jarman says that there were no arms or parts of arms, or warlike instruments of any kind on board, and no cargo of any kind, to his knowledge, except such as he had described, to the best of his knowledge, but the private arms of the officers and passengers, which were taken and kept by the captors. He also says that he has already stated all that he knows and believes relative to the true character and destination of the vessel and cargo. Bound says that there was a cotton-press on board, not put together. Bowden says that nothing was thrown overboard to prevent suspicion. Murphy, assistant engineer, says that the Peterhoff was sold to Pile, Spence & Co. by, he believes, Mr. Pearson, of Hull.

At the close of the deposition of Captain Jarman, as taken on the 1st of April, 1863, after the signature of the witness and the jurat of the prize commissioner, is a certificate signed by the commissioner, stating "that subsequent to the examination of the above deponent, circumstances having occurred which led him to suppose that deponent had not fully answered the 20th interrogatory, as to the destruction of papers in this case, and deponent having been voluntarily present before the commissioner, the 20th interrogatory was again read to deponent, and his answer thereto read to him, as herein recorded, and deponent was asked if he desired to add to or alter his answer to the above interrogatory, when deponent replied that he did not desire to change or add to his answer herein."

In the deposition of Tregidgo, after his answer to the 43d interrogatory, and before his signature to the deposition, and also before the jurat thereto, is the following statement: "The witness adds to his reply to the 20th interrogatory as follows: I have been a midshipman in the British navy, and am accustomed to seeing the form in which despatches are made up. The packet thrown overboard was put up in the same manner. There was no mark upon it. The ends were



loaded with a heavy weight of lead at each end. The first time that I ever saw it, or knew it was on board the ship, was when the Alabama boarded us. I then saw it, and saw at once that it was a package of despatches. This addition to my reply to the 20th interrogatory was made at my request. I was born in the year 1843, and am nearly 20 years of age."

The deposition of Redgate was taken on the 1st of April, 1863. On the 20th of April, 1863, he was reproduced by the United States district attorney, and, at his request, re-examined. On such re-examination he testified as follows, in answer to the 1st interrogatory: "I resided in the State of Texas until the breaking out of the war between the northern and southern States. I had resided there about thirty years—twenty-five or thirty—and battled against secession as far as my humble means would allow, until I was driven out of the State. My family resided there with me, and, when I left Texas, I left my family there. They afterwards followed me into Matamoras. I never took the oath of allegiance to the republic of Texas, nor, since its admission, to the government of the United States. I never had any papers of citizenship, nor did I ever obtain a passport at any time." On such re-examination he also testified as follows, in answer to the 9th interrogatory: "There was a small portion of the cargo on board which I owned absolutely. The bills of lading in these cases, which are among the papers, will show the portion which belonged to me absolutely, and so will the invoices which are with the papers. They were made out in my name. Other portions of the cargo were consigned to me, and the bills of lading in these cases are indorsed to me, and the invoices in these cases are made in the name of the consignors. My only interest in these cases was to arise from the commission on the sales, when made, of five *per cent*. I was not an owner, in any way, of the portion of the cargo which I now speak of as having been consigned to me. The portion of the cargo which I absolutely owned was very small, and cost me something like one hundred to one hundred and fifty pounds. Since the vessel arrived in this port, Mr. Bowden, another passenger with me, who was the agent or superintendent of a considerable portion of the cargo, has empowered me, by a power of attorney, to take care of and manage his interests in the cargo. I think the cargo in question, in which Mr. Bowden is interested, is shown by the bills of lading among the ship's papers, they being indorsed to him. Of this I am not positive, although I have very little doubt they are so indorsed, and that the names of the owners in this

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and that the vessel was taken on suspicion of an intention to run the blockade. Bowden, one of the passengers, says that Matamoras, Mexico, was to have been his home, and that he heard that the vessel was captured because they said she was going to run the blockade. Almond, one of the passengers, says that the capture was made about two or three miles outside of the harbor of St. Thomas, and that no reason was given for the seizure, unless on account of some alleged informality in the papers of the vessel. Redgate, one of the passengers, says that he was born in London, and resides in Matamoras, Mexico, and has resided there a year and a half or two years, and believes that his family are in Matamoras; that they were there with him a part of the time while he resided there, and, when not with him, were in the State of Texas. He also says: "I am a citizen of the United States. I now owe allegiance to the United States. I owe obedience to the laws of Mexico, but I owe allegiance at present to the United States government." The testimony of Redgate on this subject read originally thus: "I was once a citizen of the United States, and I suppose I am now. I now owe allegiance to Mexico, as a resident of Mexico. I think I do not owe allegiance at present to the United States." This testimony, as the record shows, was corrected by Mr Redgate, on its being read over to him, by erasure and interlineation, so as to read as first above stated. He says that he understood that the reason the capture was made was, that the master of the Peterhoff refused to be taken out of his ship with his papers. Murphy, chief engineer, says that the Peterhoff was taken on suspicion of running the blockade. Murphy, first assistant engineer, says that the vessel was seized about seven miles outside of the harbor of St. Thomas, and that he does not know the reason of her seizure, except the pretence that she was intending to run the blockade. Webber, the steward, Duffay, a fireman, Diamond, the cook, and Campbell, a seaman, all say that they do not know why the vessel was seized. Reed, a seaman, says that he should think the capture was made five or six miles off the mouth of the harbor of St. Thomas; that he does not know why the vessel was seized; and that he supposes it was on suspicion that she had contraband goods for the "confederate government."

Captain Jarman says that the Peterhoff sailed under British colors, and had no other national colors on board. The testimony of all the witnesses is to the same effect. Captain Jarman says that the vessel

with the consent of the district attorney and of the counsel for the claimants, the court made an order that Redgate be forthwith examined orally before the prize commissioners ; that the interrogatories and his answers be reduced to writing by them, and submitted to the court ; and that the district attorney and the proctors for the claimants be allowed to be present, and to put direct and cross-interrogatories to him. No examination of Mr. Redgate, under this order, appears ever to have taken place. The court has been informally advised that the examination of Mr. Redgate under this order was waived by consent of the district attorney and of the counsel for the claimants. No prejudice, therefore, can attach to Mr. Redgate because he was not examined under this order.

On the 27th of April, 1863, Captain Jarman made an affidavit, containing a statement in respect to the package which the passenger Mohl had in his possession, and which was thrown overboard by Harris, by direction of Captain Jarman, after the Peterhoff was boarded by a boat from the Vanderbilt. That statement was, in substance, the same as the one subsequently made by Captain Jarman on his further examination, which will be alluded to hereafter, and the general purport of it was that the package in question was a package which Mohl told Captain Jarman contained "white powder," but of the contents of which Captain Jarman was ignorant, and which he ordered to be thrown overboard, because he thought it would "endanger or compromise" his vessel ; and that he did not believe that it contained anything other than powder of some kind. He further stated, in his affidavit, that the twentieth standing interrogatory was, on his examination, put to him as follows : "What papers, bills of lading, letters, or other writings relating to the vessel or cargo were on board the vessel at the time she took her departure from her last clearing port before she was taken as a prize ? Were any of them burned, torn, thrown overboard, destroyed, or cancelled, or attempted to be concealed, and when and by whom, and who was then present ?" That, believing that the contents of the package were only powder, he made answer as follows : "You have all the papers which were on board at her last clearing port ; none connected with the voyage, the ship, or the cargo were destroyed. I tore up some letters from my wife and father at the time of capture. None others were destroyed, to my knowledge, by any person. None were concealed or in any way disposed of, to my knowledge ;" that Mr. Elliott, the commissioner, asked him to call in a day or two, as he might wish to see him again ;

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that, in pursuance of such invitation, he called a few days afterwards at the office of the commissioner; that the commissioner called his attention to the foregoing interrogatory, and the answer thereto, and asked him if he clearly understood the interrogatory; that he then told the commissioner about the said package in terms substantially the same as contained in the affidavit, and inquired of the commissioner if it would not be a proper matter to explain in connection with his answer to the interrogatory; and that the commissioner informed him that he did not think it was at all pertinent to the interrogatory, and that his answer to the interrogatory was in every way sufficient. On this affidavit an application was made to the court, on the part of the claimants, that Captain Jarman be allowed to add to his answer to the twentieth interrogatory the statement contained in his affidavit. On the hearing of the application, an affidavit made by Mr. Elliott, the prize commissioner, was presented to the court, stating that the request made by him to Captain Jarman, at the close of his examination, to call, was designed as a civility merely, and was an invitation rather than a request; that he subsequently sent for Captain Jarman, and with the purpose of allowing him to explain his answer to the twentieth interrogatory; that, at the interview which followed, Captain Jarman told him the history of the package, substantially as detailed in his affidavit, though perhaps not so much in detail, but that Captain Jarman thought that, as the twentieth interrogatory asked only in respect to papers, there was no occasion to change the answer, and said that he thought his answer was sufficient; and that he, the commissioner, did not express any opinion on the subject, but simply acquiesced in the opinion of Captain Jarman. It appeared that the original examination of Captain Jarman had been completed and reduced to writing, and sworn to by the witness on the 1st of April, 1863, and that the report of the testimony of Captain Jarman and of all the other witnesses had been filed on the 21st of April, 1863, and an order granted on that day by the court that all the proofs be opened. The application thus made on the part of the claimants was opposed on the part of the libellants. In deciding upon that application, I came to the conclusion that it did not appear that Captain Jarman was aware, at the time of his interview with the commissioner subsequently to his examination, that his testimony had been formally closed; that there was room for a fair implication that he was invited by the commissioner at that interview to review his answer to the twentieth interrogatory, and offer further statements in



reply to it; and that he might have supposed that his oral statements to the commissioner at that interview would be regarded by the commissioner as a continuous and constituent part of his sworn reply to that interrogatory. I, therefore, on the 13th of May, 1863, made an order that Captain Jarman be re-examined by the prize commissioners on the twentieth interrogatory, and be allowed to add to his answer the explanatory statement contained in his affidavit before named, and that he be examined at the same time by the prize commissioners upon three special interrogatories which were framed by me, and were set forth in the order.

On the 16th of May, 1863, Captain Jarman was examined under this order, and his answer then made to the twentieth interrogatory was as follows: "When the passengers engaged their passage, they were distinctly told that they would not be allowed to carry any letters, papers, or despatches in the ship. This was clearly understood. Before leaving Falmouth I received a telegram from J. Spence, esq., the owner of the ship, instructing me to question the passengers as to whether they had any documents in their possession. I immediately called them together, and advised them as to my owner's instructions, and they, one and all, in the presence of each other, and in the presence of Mr. Mole, a passenger, and another passenger who left the ship at Falmouth, then declared that they had nothing in their possession of such description. The next day the last-named passenger came to me, and said he had made up his mind to return to London, intending to go out to Mexico by the West India mail packet. This passenger's name was Besbie or Besby, and he left me the same day, and went on shore at Falmouth. After the ship left Falmouth, Mr. Mole, the passenger above named, came to me and stated that he had a small packet of white powder—patent white powder, he called it—in which he and some of his friends were interested. I said, 'You had better deliver it up to me, for it is a dangerous article to have on board.' He gave it to me, and I locked it up in my state-room. Nothing more was thought of this until we approached St. Thomas, excepting that I asked of him why he had not mentioned this before leaving Falmouth. He replied, as it was neither papers nor writings of any kind, he did not think it requisite. When the United States steamship Alabama approached us, I called Mr. Mole and told him I did not like having this packet of powder on board, and that, if the ship was likely to be searched, it must either be opened or destroyed, and then gave it in charge of one of my

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officers—the second officer, Mr. Harris—with orders to destroy this package if I instructed him. I told him in that case to throw it overboard. Not being examined by the Alabama, it was not then destroyed. After leaving St. Thomas, we were boarded by a boat from the Vanderbilt. This boat left the ship, ordering me to remain until they returned. I then called Mr. Mole again, and requested him to let me see the contents of the package. To this he objected, saying it was a patent, and could not be seen by any one but himself and friends. So I ordered it to be thrown overboard, fearing it might jeopardize the ship in some way, and it was accordingly thrown overboard. I believe it to have been white powder, as stated by Mr. Mole, and had no reason to believe otherwise, and do not think any one knew the contents of this packet but this same Mr. Mole. I do not now believe that it was anything but white powder, as above stated. I told Mr. Harris, above named, that when I instructed him to throw it overboard, I expected to instruct him in case it was requisite for me to make myself positive on the point as to the contents. After the Vanderbilt's boat left the ship, I ordered Mr. Harris to throw this package overboard from the gangway. This was after the first boarding boat of the Vanderbilt left us, and before her boat came the second time, and after Mr. Mole refused to let me see the contents." The following question was then put to Captain Jarman by the commissioner: "When you instructed Mr. Harris to throw this package overboard, did you instruct him to throw it over on the side of the ship away from the Vanderbilt's boat, so that the package could not be seen when it went over?" He replied: "I gave Mr. Harris an order to throw it overboard from the starboard gangway, that being the nearest to my cabin door. It might have been the side away from the Vanderbilt. The Vanderbilt certainly approached me on the starboard quarter. I do not know whether the Vanderbilt's boat was at that time on the port or starboard quarter. I do not recollect having instructed Mr. Harris in any other way than I have stated." Then follows this memorandum, signed by the commissioner: "The witness repeatedly refused to answer this question by a direct negative or affirmative, and, in all cases herein, was unwilling to answer without verbose explanations." The special interrogatories, framed by the court, were put to and answered by Captain Jarman, as follows: "1. Did you know, or had you ever been informed, or had you reason to believe, after your answers to the stated interrogatory aforesaid had been given by you and written down by the prize

commissioner, and when did you first acquire such knowledge, information, or belief, that any other witness, and who, being one of the ship's company on the voyage in question, had, after your examination, and when, declared before such commissioner, that any papers, and what, on board the vessel, and on the voyage inquired about, had been burned, torn, thrown overboard, destroyed or cancelled, or attempted to be destroyed or cancelled, and by whom and when?" Answer. "After my examination had been finished and written down by the commissioner, and while awaiting my second interview with 'you, as suggested by you,' I did hear that the cabin boy had stated that I had put some papers in a tin box and thrown them overboard. I cannot say how many days it was after my examination. It might have been two or it might have been three days. I cannot be positive. The cabin boy's name was John Reed. I cannot say positively who told me. I think it was the cook. It was either the cook or steward." "2. Did you, at any time, and when and where, make or offer any statement or explanation to the prize commissioner, previous to your examination and testimony in this suit on the 1st of April, 1863, in relation to the destruction or concealment of any paper or papers, and what, on board the vessel, and on the voyage in question?" Answer. "I did not make or offer any statement or explanation to the prize commissioner previous to my examination and testimony in this suit, having been a prisoner, and in jail, up to the day when I was first examined by the commissioner. I therefore had no opportunity; nor at my first examination, as no question seemed to call for this explanation." "3. Did you apply to the prize commissioner for leave to inspect your answer to the twentieth interrogatory, of your own accord, after it had been attested to by you, or was your attention called to it by the commissioner, and did he inquire of you, and when and where, whether you understood that interrogatory, and your answer thereto, at the time your testimony was given, or make any other inquiry of you to that purport or effect, and when and where?" Answer. "I did not apply of my own accord for leave to inspect my answer to the twentieth interrogatory, but I was sent for by the commissioner, and then I made an explanation. At my first interrogation, I considered the twentieth interrogatory to apply to letters, bills of lading, or papers connected with the ship or cargo. When the interrogatory was read to me by the commissioner, at this second interview, I then made the explanation relative to the package which was thrown overboard. The commissioner, at this interview,

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did ask me whether I understood the twentieth interrogatory, and my answer thereto, and he read the same to me. I then explained as above stated. This interview took place at the office of the prize commissioner the same day after getting a note from the commissioner requesting an interview. I should think this was within three or four days after my first examination. That examination was made and completed on the same day, viz., on the 1st day of April, 1863." The following statement is added to the deposition, before the signature and jurat: "The witness desires permission to state that the cabin-boy, John Reed, named herein, threatened, while on board ship, and before he reached this port, to do all he could to injure the witness, because he chastised him for neglect of duty." This was stated in the presence of many witnesses.

On the hearing of the case, the counsel for the claimants objected to the question put by the commissioner to Captain Jarman, on re-examination, on the ground that the commissioner had no right to put any question that was not specified in the order for re-examination; and to the statement by the commissioner as to the witness's refusing to answer, as being improper evidence. The court did not pass upon these objections at the time. On an objection taken by the district attorney, the court struck out, as irrelevant, the statement added by Captain Jarman as to the cabin-boy, Reed. I think that it was not proper for the commissioner to put to the witness, on his re-examination, any question except the 20th standing interrogatory, and the three special interrogatories. I also reject the statement of the commissioner as to the witness's refusal to answer; for, although, on the examination of a witness, his demeanor, and his reluctance or readiness to answer, are very often material circumstances in affecting the credit to be given to his testimony, and although, in the case of written depositions, the court is deprived of the benefit of seeing the witness face to face, yet it is manifest that the practice of permitting prize commissioners to lay before the court, for its information and guidance, statements of the character of the one in question here, would lead to such abuse that it could not be safely tolerated in any well-regulated system of jurisprudence.

At the hearing of the case, the district attorney presented to the court the following copy of a letter, accompanied by a certificate from the Department of State of the United States, under date of April 29, 1863, certifying that it was a true copy of the original on file in that department: "No. 77 Cornhill, E. C., London, Nov. 24, 1862.



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and that none were destroyed or concealed in any way. Harris says that he does not know what papers were on board the vessel when she left London; and that he threw overboard, by order of the captain, a square paper package, the contents of which he does not know, about the time of the capture, after the first boarding by the officers of the Vanderbilt, and before the prize crew took possession, he thinks, but he cannot say precisely at what time. He says: "This paper package was handed me by the captain, or he told me to get it out of the cabin, which I did. While I had it in my possession, I handed it to Campbell, or some other seaman, and told him to hold it while I was busy, and he did. He afterwards gave it back to me, and I then threw it overboard. I told the seaman who held it, that in case a boat from the Vanderbilt came alongside, not to let it be seen. The captain told me not to let any one see it. The captain had given me this same paper parcel once before, at the time the Alabama stopped us, before we were boarded by the Alabama. He told me, at that time, to keep this parcel, and throw it overboard if he told me to, or, if he made a sign to me, then to throw it over. As I did not throw it overboard then, I gave it back to the captain. The Alabama was a United States war steamer of some kind, which boarded us before we went into St. Thomas, on the same day that we went into St. Thomas. I think this was four or five days before we were captured." Tregidgo says: "I don't know what papers were on board of the steamer when she sailed, except the English mail for Matamoras. When we were first boarded by the Alabama, going into St. Thomas, the captain sent for the second officer, and gave him a packet, with instructions to keep it in the forepart of the ship, and if he, the captain, made him a sign, he was to throw the package overboard, and if the boarding officer was between the captain and second officer, so that a sign could not be made, he was to use his own discretion. On the boarding officer returning to the Alabama, the packet was taken aft to the captain. On being first boarded from the Vanderbilt, exactly the same proceedings were carried out, and the packet was again returned to the captain. On the captain perceiving the officer again coming from the Vanderbilt, he gave me the packet, and told me to keep out of the way with it. He then said, 'Never mind, fetch the second officer;' and the packet was again given to him—the second officer, Mr. Harris. On the captain observing a prize crew coming from the Vanderbilt, he called the second officer aft, and, after sending for Mr. Mohl, one of the passengers, to witness the necessity of throw-

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States consulate at London, appended to a copy of the foregoing letter, and deposing that the original letter was signed by the usual signatures of James I. Bennett and Wake, and that the copy was a true copy. This affidavit was verified by a certificate, as to its authenticity, by the United States consul at London, and by a certificate from the Department of State of the United States, under date of May 7, 1863. This letter was offered, on the part of the government, as legitimate evidence in the cause. It was urged that the letter might have been produced by any of the witnesses, in answer to the 21st standing interrogatory; that, if so produced, it would have been competent evidence; that it clearly referred to the Peterhoff and her voyage, and was signed by the persons whose names appear in the papers of that vessel as the brokers of her cargo; that the letter was admissible on the authority of the case of *The Romeo*, (6 Ch. Rob., 351;) and that, at all events, the letter, if not admissible at the hearing in the first instance, ought, being material evidence, to be admitted on an order for further proof. I do not think that, on the authority of the case referred to, or according to the settled practice in prize cases, the letter is admissible in evidence when offered for the first time at the hearing. I accordingly reject it. But while, if it were properly put in evidence in the case, I should regard it as a very material piece of evidence against the Peterhoff and her cargo, yet, upon the proofs in the case, I do not entertain any such doubt upon the question of condemning the vessel and cargo as to make it proper that I should direct an order for further proof, in order to permit the introduction in evidence of the letter.

An objection was taken, at the hearing, by the claimants, to the jurisdiction of this court in the present case, on the ground that the Peterhoff was first taken to the port of Key West, and afterwards brought to the port of New York, it being insisted that the district court at Key West could alone take jurisdiction of the case. There is no force in this objection. In prize cases, the court of that district into which the property is carried and proceeded against has jurisdiction. (*The Merino*, 9 Wheaton, 391.) The mere carrying of a vessel or of her cargo, seized on the high seas, as prize of war, into any particular district of the United States, without the institution there of any proceedings in prize, cannot affect or take away the jurisdiction over the property, of the district court of another district, in which the proceedings against the property may be instituted, after the property has been carried into such other district.

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papers had been thrown overboard by Mr. Harris, the second mate, just before the Alabama boarded us. I saw some newspapers burned by Duffy, a fireman. They belonged to a passenger, named Mohl, who gave them to me to be burned, and I gave them to Duffy and told him to burn them. I don't know why he wanted them burned. I saw the packet that Mr. Harris was said to have thrown overboard. It looked like a brown paper parcel. I did not see him throw it over." Duffay says: "The steward of the ship gave me a package of papers, or something that was printed. It looked like a book that had been 'tossed from a great many hands' He told me to burn it, which I did. I don't know the steward's name, nor the contents of the package or book which I burned, nor anything about it, except what I have stated. This was about the time the Vanderbilt captured us. I cannot say exactly whether it was before or after the capture. We were outside of the harbor of St. Thomas, after we had been in. I was down in the engine-room, and, as I came up on deck, the steward gave me this package, and told me to burn it. He did not say why, nor who it belonged to, nor anything more than to burn it." Reed says: "When we first saw the United States gunboat, the Alabama, which boarded us on the 20th day of February, before we went into St. Thomas, the captain sent Mr. Harris, the second officer, forward with a box of papers, which papers I saw the captain put into the box, and he told Mr. Harris to put something into the box to sink it, and, on the raising of his finger, to let it go overboard, (the box and papers, I mean;) but, as the officer did not search the ship, he took the box back again and gave it to the captain. When we sighted the Vanderbilt, the captain again told Mr. Harris, the second officer, to take the box forward again, and be sure to put something into it to sink it; and, after the first boat which boarded us from the Vanderbilt was returning to the Vanderbilt, the captain told Mr. Harris that if the boat from the Vanderbilt returned again to our ship, then to throw the box overboard, which Mr. Harris did. I saw it go overboard myself. He then sent the steward, Thomas Webber, with another bundle of papers, to George Duffay, the fireman, to be put into the furnace, which was done; and, when the steward returned, the captain gave him two papers to hide, and, in case the captain was taken out of the ship, then the steward was told to destroy them, and he made a motion with his fingers as if to tear them. This was in the pantry, and I was alongside of the steward at the time, and the captain was opposite to both of us. I do not know whether the steward did de-

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stroy them or not." Campbell says: "The second mate gave me a sealed parcel, wrapped in brown paper. He told me to take care of it, and, if I was signalled by either himself or the captain, I was to let them drop overboard. I was in the forward part of the ship. The boarding officer was at that time on board from the United States steamer Alabama. After the officer left, I gave the parcel back to the second mate. Afterwards, when the prize crew came off from the Vanderbilt, I saw the second mate give the same parcel to the captain of the Peterhoff, and I saw the captain drop them overboard from the starboard gangway. The package was heavy, but I do not know what was in it."

Captain Jarman says that he knew of the blockade of the principal ports of Charleston, the Mississippi, &c., before he left England, and knew about the war in America. The testimony of all the witnesses is, that the officers, crew, and passengers knew of the war, and of the blockade of the enemy's ports, before leaving England.

Captain Jarman says: "I was spoken and boarded by the United States ship Alabama on this voyage. My papers were examined, but my papers were not indorsed. I was allowed to proceed. I was spoken by the Alabama about two miles from St. John's island, and seven from the harbor of St. Thomas, on the 20th of February last."

Harris says that, on her previous voyage, the vessel was under another owner, Mr. Pearson, of Hull. Duffay says: "When I shipped, I refused to go if the vessel was to run the blockade. This question arose between the captain and me at the Sailors' Home, where I shipped. I told him I did not wish him to take me to run the blockade. He said it was more than he dare do, to run a blockade, as he belonged to the naval reserve."

Captain Jarman says that he has sustained considerable loss by the seizure; and that, in case his property should not be restored, he will sustain considerable loss. Bowden says that he has sustained a serious loss by the capture, in time and business, and in other respects. Almond says that he has sustained great loss by the capture. Redgate says: "I have sustained an injury by the seizure of this vessel. I compute my loss in this way—imprisonment on board of the vessel, loss of time, loss sustained in business, loss by being deprived of performing my duty as agent of Lloyd's, at Matamoras, and for other wrongs and privations."

Captain Jarman says that the vessel was insured, and he believes the cargo was. Bound says that the vessel was insured partly in Lon-

don and Paris. Bowden says that the part of the cargo which he represented was insured or partially insured. Almond says that his portion of the cargo was insured for £11,500 in Lloyd's for the voyage from London to Matamoras, with liberty to stop at St. Thomas or Jamaica; that the premium was under £5, and he thinks about 97s.; and that it was insured by his father and uncle with Bennett & Wake, brokers. Redgate says that the goods, as far as he was concerned, were insured; that he understands that the vessel was insured also; that the insurance was from London to Matamoras, touching at St. Thomas for coal; that he does not recollect at what premium; and that some of the insurances were effected in London and some in Paris.

Captain Jarman says that if he had arrived at his destined port, the property would have become the property of the consignees—that is, for the time being; and that the property was represented by the passengers who were on board. He says that there was a small quantity of tea on board. Tregidgo says: "I heard Mr. Eyck, one of the passengers, say that the cargo was to go across the river, from Matamoras into Texas. I am very confident of this." Bowden says that, if they had arrived at Matamoras, the part of the cargo which he represented would have taken the chance of the market for its sale; and that the proceeds were to be returned. Almond says that, on arriving at Matamoras, he was to hold the cargo, and take his chance in the market for its sale. Redgate says that, if the vessel had arrived at Matamoras, the cargo would have belonged or would have been at the disposal of the persons holding the bills of lading, and that the laders or owners were to take the chance of the market.

Captain Jarman says that he knows of no papers of any kind relating to the vessel and cargo in any country, except those delivered to the captors; and that no papers were delivered out of the vessel in any way whatever, to his knowledge. Bowden says that the prize-master, at the time of the capture, took away all the papers relating to the vessel and cargo. Almond says that he does not know of any other papers than those received by the prize officer. He says: "All the vessel's papers, and all the papers relating to the cargo, were delivered by Captain Jarman and by ourselves to the prize officer, acting master Lewis, of the Vanderbilt, on the day of capture. I delivered four bills of lading, set of invoices for the entire lot of my goods, and the Mexican consul's certificate of proper shipment of goods, to the officer. These were all the papers I had relating to the cargo." Redgate says: "There are not in any country besides the United States,

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nor on board of any vessel, any bills of lading, invoices, letters, instruments, papers, or documents relative to the vessel or cargo, that I am aware of; none that I know or heard of." He says: "There were no papers delivered out of, or carried away in any manner whatever from the vessel that I know of. I never heard that any had been, except those that were taken by the prize officer."

Captain Jarman says: "There were eight passengers on board when I left London or Plymouth. Their names are as follows: Samuel or S. Redgate, Robert Bowden, Wellesly Almond, Mr. Mohl, Mr. Edwards, Mr. Heyck, Mr. Ellsworth. The last four left me while I was at Key West, having no interest in the cargo. One other left at Falmouth, he having joined the ship at Plymouth. The three first named are in charge of a large portion of the cargo, and are now here. They were taken on board in London or Plymouth, and were destined to Matamoras. None of the eight passengers were citizens of the United States, to my knowledge. Possibly Mr. Edwards may have been." Bound says: "Bowden, Almond, Redgate, Edwards, H. Heyck, Ellsworth, Moyles, were passengers on the vessel at the capture. Redgate, Edwards, Heyck, and Moyles are from Mexico; the others from England. All are merchants. They came on board at London and Plymouth. Bowden, Redgate, and Almond were, I think, interested in the cargo; the others not, I believe. They were all going to Matamoras. No citizen of the United States was on board nor any citizen of any of the States at war with the United States." Tregidgo says: "There were seven passengers on board. Their names were Bowden, Almond, Ellsworth, Eyck, Mohl, Edwards, Redgate. Mohl and Redgate told me they were residents of Texas. Eyck also belongs to Texas. He told me so. There was a Mr. Bisbie, who came on board in Plymouth, and left the ship at Falmouth. I think he was an army officer, as he had his sword with him. I think he was an American. The passengers were going to Matamoras. Edwards told me he must be back into the southern States by the first of March." Bowden says: "There were seven passengers on board. All were bound from England to Matamoras. They were myself, Messrs. Redgate, Ellsworth, Mohl, Edwards, Heyck, and Almond." Almond says that there were seven passengers on board, S. J. Redgate, R. Bowden, Mr. Ellsworth, Mr. Mohl, Mr. Edwards, Mr. Heyck, and himself; that Mr. Mohl and Mr. Heyck were Germans, as he believes; that the remainder were Englishmen with the exception of Mr. Edwards, who told him he was an American; and that they were all bound to Mat-

amoras. Redgate says that there were seven passengers on board, including himself, Bowden and Almond; that the others were Mr Edwards, Mr. Hyack, Mr. Mowl, and Mr. Ellsworth; that he thinks Mr. Edwards was an American; that Mr. Mowl and Mr. Hyack were Germans, and Mr. Ellsworth a Scotchman, who was bound to Matamoras, as his (Redgate's) clerk; that they were young men; and that he does not know that they had any families. Webber says that there were seven or eight passengers on board when they left Plymouth; that one, by the name of Bisby or Bigbee, left at Falmouth; that three or four left at Key West; that their names were Mr. Ellsworth, Mr. Hyeck, Mr. Edwards, Mr. Mole. Reed says that there were seven passengers on board, and that one joined at Plymouth and left at Falmouth; that his name was Colonel Bigsby; that he was an officer in the confederate army; that one of the passengers was Mr. Redgate, and the others Mr. Almond, Mr. Mole, Mr. Hyeck, Mr. Edwards, Mr. Ellsworth, Mr. Bowden; that they were all taken on board at Plymouth, except Mr. Hyeck and Mr. Ellsworth, who were taken on board at London; that they were going to Matamoras; that they said that from there they were going home; that they did not say where their home was, but that he heard them say that they could not get home because their place was blockaded; that Mr. Mole burned some papers when the Alabama boarded them; and that it was note paper, with the "confederate flag" upon it.

Captain Jarman says that all the papers found on board are true and fair, to the best of his knowledge and belief; that none are false or colorable, to the best of his knowledge; that there were no other papers of any kind, except as he has already stated; and that he has signed no papers concerning the vessel or cargo since her capture. Bowden says that all the papers found on board are true and fair, to the best of his belief; and that he had a passport for Matamoras, Mexico, through Earl Russell. Almond says that all the papers found on board are true and fair, to the best of his knowledge; that he had a passport from the English government, viséd by the Mexican consul at London, to go to Mexico, and travel there, and has it now in his possession. Redgate says: "As far as concerns myself, all the papers which I had were entirely true and fair, and, as far as I know or believe, all of the other papers were so, and none of them were false or colorable, nor do I know of any matter or circumstance to affect their credit. I have not made any oath or affirmation in order to obtain any passport or other clearance. I had no passport or letter of safe con-

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duct. I do not know whether the others had or not. I have written letters to the British consul at Key West, and also to Lloyd's, giving an account of the capture. I have no copies of such letters."

Captain Jarman says that he was steering, when captured, towards Matamoras; that his course was not altered upon the appearance of the capturing vessel; that the course of the Peterhoff was at all times directed to her port of destination, as shown on her papers; and that her course was not altered at any time to any port or place, except to such ports as he had already stated. The testimony of all the other witnesses is to the same purport.

Captain Jarman says that there were no arms or parts of arms, or warlike instruments of any kind on board, and no cargo of any kind, to his knowledge, except such as he had described, to the best of his knowledge, but the private arms of the officers and passengers, which were taken and kept by the captors. He also says that he has already stated all that he knows and believes relative to the true character and destination of the vessel and cargo. Bound says that there was a cotton-press on board, not put together. Bowden says that nothing was thrown overboard to prevent suspicion. Murphy, assistant engineer, says that the Peterhoff was sold to Pile, Spence & Co. by, he believes, Mr. Pearson, of Hull.

At the close of the deposition of Captain Jarman, as taken on the 1st of April, 1863, after the signature of the witness and the jurat of the prize commissioner, is a certificate signed by the commissioner, stating "that subsequent to the examination of the above deponent, circumstances having occurred which led him to suppose that deponent had not fully answered the 20th interrogatory, as to the destruction of papers in this case, and deponent having been voluntarily present before the commissioner, the 20th interrogatory was again read to deponent, and his answer thereto read to him, as herein recorded, and deponent was asked if he desired to add to or alter his answer to the above interrogatory, when deponent replied that he did not desire to change or add to his answer herein."

In the deposition of Tregidgo, after his answer to the 43d interrogatory, and before his signature to the deposition, and also before the jurat thereto, is the following statement: "The witness adds to his reply to the 20th interrogatory as follows: I have been a midshipman in the British navy, and am accustomed to seeing the form in which despatches are made up. The packet thrown overboard was put up in the same manner. There was no mark upon it. The ends were



loaded with a heavy weight of lead at each end. The first time that I ever saw it, or knew it was on board the ship, was when the Alabama boarded us. I then saw it, and saw at once that it was a package of despatches. This addition to my reply to the 20th interrogatory was made at my request. I was born in the year 1843, and am nearly 20 years of age."

The deposition of Redgate was taken on the 1st of April, 1863. On the 20th of April, 1863, he was reproduced by the United States district attorney, and, at his request, re-examined. On such re-examination he testified as follows, in answer to the 1st interrogatory: "I resided in the State of Texas until the breaking out of the war between the northern and southern States. I had resided there about thirty years—twenty-five or thirty—and battled against secession as far as my humble means would allow, until I was driven out of the State. My family resided there with me, and, when I left Texas, I left my family there. They afterwards followed me into Matamoras. I never took the oath of allegiance to the republic of Texas, nor, since its admission, to the government of the United States. I never had any papers of citizenship, nor did I ever obtain a passport at any time." On such re-examination he also testified as follows, in answer to the 9th interrogatory: "There was a small portion of the cargo on board which I owned absolutely. The bills of lading in these cases, which are among the papers, will show the portion which belonged to me absolutely, and so will the invoices which are with the papers. They were made out in my name. Other portions of the cargo were consigned to me, and the bills of lading in these cases are indorsed to me, and the invoices in these cases are made in the name of the consignors. My only interest in these cases was to arise from the commission on the sales, when made, of five *per cent*. I was not an owner, in any way, of the portion of the cargo which I now speak of as having been consigned to me. The portion of the cargo which I absolutely owned was very small, and cost me something like one hundred to one hundred and fifty pounds. Since the vessel arrived in this port, Mr. Bowden, another passenger with me, who was the agent or superintendent of a considerable portion of the cargo, has empowered me, by a power of attorney, to take care of and manage his interests in the cargo. I think the cargo in question, in which Mr. Bowden is interested, is shown by the bills of lading among the ship's papers, they being indorsed to him. Of this I am not positive, although I have very little doubt they are so indorsed, and that the names of the owners in this

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... sailing upon a voyage from London to the mouth  
... the commerce which the law regards is that  
... the destination and intended use of the cargo  
... not on the incidental voyage of a vessel  
... carriers through which the property is  
... destination. The proper inquiry, in  
... transportation of contraband goods, is,  
... for sale or consumption in the neutral mar-  
... ect or intended object of their transportation is  
... y with them. If the immediate object of the voy-  
... Peterhoff was to supply the enemy with contraband goods  
... ard of her, she and her cargo were liable to capture, even  
... such goods were neutral property, and even though they were  
... delivered in the first instance at a neutral port, provided they  
... were destined for the direct use of the enemy. If the Peterhoff had  
... on board goods contraband of war, which were destined, when they  
... left England, for the use of the enemy, in the country of the enemy,  
... and not for sale or consumption in Mexico, the mere destination of the  
... vessel to Mexican waters, and even the mere intended landing of the  
... goods at Matamoras, on their way to the enemy's country, would not  
... exempt the vessel or her contraband cargo from lawful capture as prize  
... of war. If it was the intention of those having control of the move-  
... ments of the Peterhoff and of her cargo that she should merely lie in  
... Mexican waters, at the mouth of the Rio Grande, and that her cargo,  
... composed in large part of contraband articles, should be transported,  
... after being unladen, into the enemy's country, either directly or by the  
... way of Matamoras, then her voyage was not a voyage, in good faith,  
... from one neutral port to another neutral port, but was, so far as re-  
... spected the commerce in which her cargo was employed at the time of  
... her seizure, a voyage in the course of prosecution to the country of the  
... enemy, although she had not, as yet, reached the mouth of the Rio  
... Grande, and although her regular papers documented her for a voy-  
... age from London to Matamoras, or to the mouth of the Rio Grande.  
... If the intention that the contraband goods should reach the country of  
... the enemy existed when they left England, that intention cannot be  
... destroyed or rendered of no effect by the avowed, additional, and ap-  
... parently innocent intention, that the terminus of the transit of the  
... vessel herself should be in Mexican waters. In such case, the sole  
... purpose of the guise given to the transaction would be, to have upon  
... the papers of the vessel an ostensible neutral terminus for the voyage.

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with the consent of the district attorney and of the counsel for the claimants, the court made an order that Redgate be forthwith examined orally before the prize commissioners; that the interrogatories and his answers be reduced to writing by them, and submitted to the court; and that the district attorney and the proctors for the claimants be allowed to be present, and to put direct and cross-interrogatories to him. No examination of Mr. Redgate, under this order, appears ever to have taken place. The court has been informally advised that the examination of Mr. Redgate under this order was waived by consent of the district attorney and of the counsel for the claimants. No prejudice, therefore, can attach to Mr. Redgate because he was not examined under this order.

On the 27th of April, 1863, Captain Jarman made an affidavit, containing a statement in respect to the package which the passenger Mohl had in his possession, and which was thrown overboard by Harris, by direction of Captain Jarman, after the Peterhoff was boarded by a boat from the Vanderbilt. That statement was, in substance, the same as the one subsequently made by Captain Jarman on his further examination, which will be alluded to hereafter, and the general purport of it was that the package in question was a package which Mohl told Captain Jarman contained "white powder," but of the contents of which Captain Jarman was ignorant, and which he ordered to be thrown overboard, because he thought it would "endanger or compromise" his vessel; and that he did not believe that it contained anything other than powder of some kind. He further stated, in his affidavit, that the twentieth standing interrogatory was, on his examination, put to him as follows: "What papers, bills of lading, letters, or other writings relating to the vessel or cargo were on board the vessel at the time she took her departure from her last clearing port before she was taken as a prize? Were any of them burned, torn, thrown overboard, destroyed, or cancelled, or attempted to be concealed, and when and by whom, and who was then present?" That, believing that the contents of the package were only powder, he made answer as follows: "You have all the papers which were on board at her last clearing port; none connected with the voyage, the ship, or the cargo were destroyed. I tore up some letters from my wife and father at the time of capture. None others were destroyed, to my knowledge, by any person. None were concealed or in any way disposed of, to my knowledge;" that Mr. Elliott, the commissioner, asked him to call in a day or two, as he might wish to see him again;

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that, in pursuance of such invitation, he called a few days afterwards at the office of the commissioner; that the commissioner called his attention to the foregoing interrogatory, and the answer thereto, and asked him if he clearly understood the interrogatory; that he then told the commissioner about the said package in terms substantially the same as contained in the affidavit, and inquired of the commissioner if it would not be a proper matter to explain in connection with his answer to the interrogatory; and that the commissioner informed him that he did not think it was at all pertinent to the interrogatory, and that his answer to the interrogatory was in every way sufficient. On this affidavit an application was made to the court, on the part of the claimants, that Captain Jarman be allowed to add to his answer to the twentieth interrogatory the statement contained in his affidavit. On the hearing of the application, an affidavit made by Mr. Elliott, the prize commissioner, was presented to the court, stating that the request made by him to Captain Jarman, at the close of his examination, to call, was designed as a civility merely, and was an invitation rather than a request; that he subsequently sent for Captain Jarman, and with the purpose of allowing him to explain his answer to the twentieth interrogatory; that, at the interview which followed, Captain Jarman told him the history of the package, substantially as detailed in his affidavit, though perhaps not so much in detail, but that Captain Jarman thought that, as the twentieth interrogatory asked only in respect to papers, there was no occasion to change the answer, and said that he thought his answer was sufficient; and that he, the commissioner, did not express any opinion on the subject, but simply acquiesced in the opinion of Captain Jarman. It appeared that the original examination of Captain Jarman had been completed and reduced to writing, and sworn to by the witness on the 1st of April, 1863, and that the report of the testimony of Captain Jarman and of all the other witnesses had been filed on the 21st of April, 1863, and an order granted on that day by the court that all the proofs be opened. The application thus made on the part of the claimants was opposed on the part of the libellants. In deciding upon that application, I came to the conclusion that it did not appear that Captain Jarman was aware, at the time of his interview with the commissioner subsequently to his examination, that his testimony had been formally closed; that there was room for a fair implication that he was invited by the commissioner at that interview to review his answer to the twentieth interrogatory, and offer further statements in



reply to it; and that he might have supposed that his oral statements to the commissioner at that interview would be regarded by the commissioner as a continuous and constituent part of his sworn reply to that interrogatory. I, therefore, on the 13th of May, 1863, made an order that Captain Jarman be re-examined by the prize commissioners on the twentieth interrogatory, and be allowed to add to his answer the explanatory statement contained in his affidavit before named, and that he be examined at the same time by the prize commissioners upon three special interrogatories which were framed by me, and were set forth in the order.

On the 16th of May, 1863, Captain Jarman was examined under this order, and his answer then made to the twentieth interrogatory was as follows: "When the passengers engaged their passage, they were distinctly told that they would not be allowed to carry any letters, papers, or despatches in the ship. This was clearly understood. Before leaving Falmouth I received a telegram from J. Spence, esq., the owner of the ship, instructing me to question the passengers as to whether they had any documents in their possession. I immediately called them together, and advised them as to my owner's instructions, and they, one and all, in the presence of each other, and in the presence of Mr. Mole, a passenger, and another passenger who left the ship at Falmouth, then declared that they had nothing in their possession of such description. The next day the last-named passenger came to me, and said he had made up his mind to return to London, intending to go out to Mexico by the West India mail packet. This passenger's name was Besbie or Besby, and he left me the same day, and went on shore at Falmouth. After the ship left Falmouth, Mr. Mole, the passenger above named, came to me and stated that he had a small packet of white powder—patent white powder, he called it—in which he and some of his friends were interested. I said, 'You had better deliver it up to me, for it is a dangerous article to have on board.' He gave it to me, and I locked it up in my state-room. Nothing more was thought of this until we approached St. Thomas, excepting that I asked of him why he had not mentioned this before leaving Falmouth. He replied, as it was neither papers nor writings of any kind, he did not think it requisite. When the United States steamship Alabama approached us, I called Mr. Mole and told him I did not like having this packet of powder on board, and that, if the ship was likely to be searched, it must either be opened or destroyed, and then gave it in charge of one of my

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officers—the second officer, Mr. Harris—with orders to destroy this package if I instructed him. I told him in that case to throw it overboard. Not being examined by the Alabama, it was not then destroyed. After leaving St. Thomas, we were boarded by a boat from the Vanderbilt. This boat left the ship, ordering me to remain until they returned. I then called Mr. Mole again, and requested him to let me see the contents of the package. To this he objected, saying it was a patent, and could not be seen by any one but himself and friends. So I ordered it to be thrown overboard, fearing it might jeopardize the ship in some way, and it was accordingly thrown overboard. I believe it to have been white powder, as stated by Mr. Mole, and had no reason to believe otherwise, and do not think any one knew the contents of this packet but this same Mr. Mole. I do not now believe that it was anything but white powder, as above stated. I told Mr. Harris, above named, that when I instructed him to throw it overboard, I expected to instruct him in case it was requisite for me to make myself positive on the point as to the contents. After the Vanderbilt's boat left the ship, I ordered Mr. Harris to throw this package overboard from the gangway. This was after the first boarding boat of the Vanderbilt left us, and before her boat came the second time, and after Mr. Mole refused to let me see the contents." The following question was then put to Captain Jarman by the commissioner: "When you instructed Mr. Harris to throw this package overboard, did you instruct him to throw it over on the side of the ship away from the Vanderbilt's boat, so that the package could not be seen when it went over?" He replied: "I gave Mr. Harris an order to throw it overboard from the starboard gangway, that being the nearest to my cabin door. It might have been the side away from the Vanderbilt. The Vanderbilt certainly approached me on the starboard quarter. I do not know whether the Vanderbilt's boat was at that time on the port or starboard quarter. I do not recollect having instructed Mr. Harris in any other way than I have stated." Then follows this memorandum, signed by the commissioner: "The witness repeatedly refused to answer this question by a direct negative or affirmative, and, in all cases herein, was unwilling to answer without verbose explanations." The special interrogatories, framed by the court, were put to and answered by Captain Jarman, as follows: "1. Did you know, or had you ever been informed, or had you reason to believe, after your answers to the stated interrogatory aforesaid had been given by you and written down by the prize

commissioner, and when did you first acquire such knowledge, information, or belief, that any other witness, and who, being one of the ship's company on the voyage in question, had, after your examination, and when, declared before such commissioner, that any papers, and what, on board the vessel, and on the voyage inquired about, had been burned, torn, thrown overboard, destroyed or cancelled, or attempted to be destroyed or cancelled, and by whom and when?"

Answer. "After my examination had been finished and written down by the commissioner, and while awaiting my second interview with 'you, as suggested by you,' I did hear that the cabin boy had stated that I had put some papers in a tin box and thrown them overboard. I cannot say how many days it was after my examination. It might have been two or it might have been three days. I cannot be positive. The cabin boy's name was John Reed. I cannot say positively who told me. I think it was the cook. It was either the cook or steward." "2. Did you, at any time, and when and where, make or offer any statement or explanation to the prize commissioner, previous to your examination and testimony in this suit on the 1st of April, 1863, in relation to the destruction or concealment of any paper or papers, and what, on board the vessel, and on the voyage in question?" Answer. "I did not make or offer any statement or explanation to the prize commissioner previous to my examination and testimony in this suit, having been a prisoner, and in jail, up to the day when I was first examined by the commissioner. I therefore had no opportunity; nor at my first examination, as no question seemed to call for this explanation." "3. Did you apply to the prize commissioner for leave to inspect your answer to the twentieth interrogatory, of your own accord, after it had been attested to by you, or was your attention called to it by the commissioner, and did he inquire of you, and when and where, whether you understood that interrogatory, and your answer thereto, at the time your testimony was given, or make any other inquiry of you to that purport or effect, and when and where?" Answer. "I did not apply of my own accord for leave to inspect my answer to the twentieth interrogatory, but I was sent for by the commissioner, and then I made an explanation. At my first interrogation, I considered the twentieth interrogatory to apply to letters, bills of lading, or papers connected with the ship or cargo. When the interrogatory was read to me by the commissioner, at this second interview, I then made the explanation relative to the package which was thrown overboard. The commissioner, at this interview,

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did ask me whether I understood the twentieth interrogatory, and my answer thereto, and he read the same to me. I then explained as above stated. This interview took place at the office of the prize commissioner the same day after getting a note from the commissioner requesting an interview. I should think this was within three or four days after my first examination. That examination was made and completed on the same day, viz., on the 1st day of April, 1863." The following statement is added to the deposition, before the signature and jurat: "The witness desires permission to state that the cabin-boy, John Reed, named herein, threatened, while on board ship, and before he reached this port, to do all he could to injure the witness, because he chastised him for neglect of duty." This was stated in the presence of many witnesses.

On the hearing of the case, the counsel for the claimants objected to the question put by the commissioner to Captain Jarman, on re-examination, on the ground that the commissioner had no right to put any question that was not specified in the order for re-examination; and to the statement by the commissioner as to the witness's refusing to answer, as being improper evidence. The court did not pass upon these objections at the time. On an objection taken by the district attorney, the court struck out, as irrelevant, the statement added by Captain Jarman as to the cabin-boy, Reed. I think that it was not proper for the commissioner to put to the witness, on his re-examination, any question except the 20th standing interrogatory, and the three special interrogatories. I also reject the statement of the commissioner as to the witness's refusal to answer; for, although, on the examination of a witness, his demeanor, and his reluctance or readiness to answer, are very often material circumstances in affecting the credit to be given to his testimony, and although, in the case of written depositions, the court is deprived of the benefit of seeing the witness face to face, yet it is manifest that the practice of permitting prize commissioners to lay before the court, for its information and guidance, statements of the character of the one in question here, would lead to such abuse that it could not be safely tolerated in any well-regulated system of jurisprudence.

At the hearing of the case, the district attorney presented to the court the following copy of a letter, accompanied by a certificate from the Department of State of the United States, under date of April 29, 1863, certifying that it was a true copy of the original on file in that department: "No. 77 Cornhill, E. C., London, Nov. 24, 1862.



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— — —, esq. Dear Sir: We may state, for the guidance of any friends who may be desirous of shipping to America, that arrangements have been made for the despatch of a vessel by us to the Rio Grande, about the first week of December; that cost of freight and insurance on goods can be paid at the port of delivery. The services of the highly respectable firm of Messrs. Brown, Fleming & Co., at Matamoras, have been secured; also those of Mr. Redgate, Lloyd's agent, an expert in cotton, and who has been resident nearly 40 years in Texas and Mexico. That gentleman's services will be of great value to shippers, in respect to his local knowledge and influence, as also as regards agency of the inland transit, and landing and shipping of goods and cotton. Mr. Harding, of the firm of Messrs. Harding, Pullien & Co., of this city, has been named, and consented to act as factor for the receiving of the proceeds in cotton, and the equal distribution of same to the shippers, according to value of respective shipments, and who will effect the necessary insurance. Further, a Mr. Besbie, of the Confederate States of America, holds a contract from that government, whereby he is to receive 100 per cent. on invoice cost, payable in cotton at specie value, clear of all charges of freight, &c., for any goods he may deliver into the Confederate States. Said contract has been authenticated by Mr. Mason and others. He is willing to share same, say to the extent of 50 per cent., with any houses who may feel inclined to ship. Moreover, said parties are at liberty to send out their own supercargoes, and, if the goods can meet with a better market, shippers by our vessel may avail themselves of said contract or not; but, in the latter case, there will be no certainty of getting cotton back, as the wagon traffic cannot be properly carried out without the aid of government support, in the shape of teamsters to attend to cattle, and which the confederate government will supply from the army, to facilitate the inland transport of goods and the bringing back of cotton for the contract. In the event of peace or cessation of hostilities, the confederate government, by the contract, binds itself to receive goods that are shipped but not delivered, and, for any orders not shipped, but in course of same, 10 per cent. profit upon invoice cost and charges. Any further information you may require we shall be happy to give our best efforts to obtain from the respective parties interested. We remain, dear sir, yours truly, Jas. I. Bennett & Wake."

The district attorney also presented to the court an affidavit, made on the 24th of April, 1863, by Joshua Nunn, chief clerk in the United

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States consulate at London, appended to a copy of the foregoing letter, and deposing that the original letter was signed by the usual signatures of James I. Bennett and Wake, and that the copy was a true copy. This affidavit was verified by a certificate, as to its authenticity, by the United States consul at London, and by a certificate from the Department of State of the United States, under date of May 7, 1863. This letter was offered, on the part of the government, as legitimate evidence in the cause. It was urged that the letter might have been produced by any of the witnesses, in answer to the 21st standing interrogatory; that, if so produced, it would have been competent evidence; that it clearly referred to the Peterhoff and her voyage, and was signed by the persons whose names appear in the papers of that vessel as the brokers of her cargo; that the letter was admissible on the authority of the case of *The Romeo*, (6 Ch. Rob., 351;) and that, at all events, the letter, if not admissible at the hearing in the first instance, ought, being material evidence, to be admitted on an order for further proof. I do not think that, on the authority of the case referred to, or according to the settled practice in prize cases, the letter is admissible in evidence when offered for the first time at the hearing. I accordingly reject it. But while, if it were properly put in evidence in the case, I should regard it as a very material piece of evidence against the Peterhoff and her cargo, yet, upon the proofs in the case, I do not entertain any such doubt upon the question of condemning the vessel and cargo as to make it proper that I should direct an order for further proof, in order to permit the introduction in evidence of the letter.

An objection was taken, at the hearing, by the claimants, to the jurisdiction of this court in the present case, on the ground that the Peterhoff was first taken to the port of Key West, and afterwards brought to the port of New York, it being insisted that the district court at Key West could alone take jurisdiction of the case. There is no force in this objection. In prize cases, the court of that district into which the property is carried and proceeded against has jurisdiction. (*The Merino*, 9 Wheaton, 391.) The mere carrying of a vessel or of her cargo, seized on the high seas, as prize of war, into any particular district of the United States, without the institution there of any proceedings in prize, cannot affect or take away the jurisdiction over the property, of the district court of another district, in which the proceedings against the property may be instituted, after the property has been carried into such other district.

In the opinion delivered by me in the case of *The Stephen Hart*, I stated that many of the principal questions involved in that case, and in the cases of *The Springbok* and *The Peterhoff* were alike, and I announced, in that opinion, the leading principles of public law which led to a condemnation in all the cases. In my opinion in the case of *The Springbok*, I restated those principles. As the present opinion is necessarily of great length, in consequence of the mass of documents and evidence in the case, I must content myself with referring to my opinions in the cases of *The Stephen Hart* and *The Springbok* for a full exposition of the authorities and the reasoning which support those principles.

A neutral vessel, laden with a neutral cargo, may lawfully trade between neutral ports in time of war, in all descriptions of merchandise, contraband or otherwise, without being liable to seizure by a belligerent. But a seizure is justifiable if a vessel be engaged in carrying contraband of war for or to the enemy, or to the port of the enemy. (Instructions of the Navy Department, of August 18, 1862, to the naval commanders of the United States.) And all contraband goods, even though belonging to neutrals, and found in neutral bottoms, are liable to capture and condemnation, if seized by a belligerent while on a destination for the use of the enemy of such belligerent. (Ordinance of the Congress of the Confederation, of February 1, 1782, 5 Wheaton, Appendix, p. 120; Halleck on International Law, chap. 24, section 11, page 576; 1 Duer on Insurance, 630; *The Commercen*, 1 Wheaton, 388, 389.)

The doctrine of all the authorities, so far as it is applicable to the case of the *Peterhoff*, is, that if her voyage was an honest one, from one neutral port to another neutral port, and she was carrying neutral goods between those two ports only, she was not liable to capture; but that, if her voyage was a simulated voyage, and she was carrying articles contraband of war, really destined for the use of the enemy, and to be introduced into the enemy's country by trans-shipment from her, at the mouth of the Rio Grande, into other vessels, she and her cargo were liable to seizure and condemnation. These principles were very fully discussed by the late district judge for the southern district of Florida, in the cases of *The Dolphin* and *The Pearl*; and I refer to his opinions in those cases as being fully concurred in by me. According to these principles, the question as to whether or not the cargo of the *Peterhoff* was being transported in the business of lawful commerce is not decided by merely deciding the question as to whether she was

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documented for and sailing upon a voyage from London to the mouth of the Rio Grande. The commerce which the law regards is that which is dependent upon the destination and intended use of the cargo on board of the vessel, and not on the incidental voyage of a vessel which may be but one of many carriers through which the property is to reach its originally intended destination. The proper inquiry, in testing the lawfulness of the transportation of contraband goods, is, whether they are intended for sale or consumption in the neutral market, or whether the direct or intended object of their transportation is to supply the enemy with them. If the immediate object of the voyage of the Peterhoff was to supply the enemy with contraband goods laden on board of her, she and her cargo were liable to capture, even though such goods were neutral property, and even though they were to be delivered in the first instance at a neutral port, provided they were destined for the direct use of the enemy. If the Peterhoff had on board goods contraband of war, which were destined, when they left England, for the use of the enemy, in the country of the enemy, and not for sale or consumption in Mexico, the mere destination of the vessel to Mexican waters, and even the mere intended landing of the goods at Matamoras, on their way to the enemy's country, would not exempt the vessel or her contraband cargo from lawful capture as prize of war. If it was the intention of those having control of the movements of the Peterhoff and of her cargo that she should merely lie in Mexican waters, at the mouth of the Rio Grande, and that her cargo, composed in large part of contraband articles, should be transported, after being unladen, into the enemy's country, either directly or by the way of Matamoras, then her voyage was not a voyage, in good faith, from one neutral port to another neutral port, but was, so far as respected the commerce in which her cargo was employed at the time of her seizure, a voyage in the course of prosecution to the country of the enemy, although she had not, as yet, reached the mouth of the Rio Grande, and although her regular papers documented her for a voyage from London to Matamoras, or to the mouth of the Rio Grande. If the intention that the contraband goods should reach the country of the enemy existed when they left England, that intention cannot be destroyed or rendered of no effect by the avowed, additional, and apparently innocent intention, that the terminus of the transit of the vessel herself should be in Mexican waters. In such case, the sole purpose of the guise given to the transaction would be, to have upon the papers of the vessel an ostensible neutral terminus for the voyage.

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If the object of sending the Peterhoff into Mexican waters at the mouth of the Rio Grande was merely to trans-ship the contraband articles carried by her into lighters, to be transported to the country of the enemy, the only commerce carried on in such case would be the transportation of the contraband articles from England to the country of the enemy, as was intended when they left England.

It is equally well settled, that the ulterior destination of contraband goods determines the character of the trade, no matter how circuitous the route by which they are to reach that destination; that, even though the Peterhoff was destined to Mexican waters, and the goods were there to be unladen, yet, if they were to be transported thence, by any mode of conveyance, to the enemy's country, the trade was unlawful; that the trade in contraband goods with the enemy's country, through neutral territory, is likewise unlawful; that the goods so shipped through neutral territory, even though they may be unladen and trans-shipped, are liable to condemnation; that, if the voyage of the Peterhoff was of such a character, it was an attempt to carry on trade with the enemy by the circuitous route of Mexican waters or a Mexican port, which the law will not countenance; that, under such circumstances, her voyage was illegal at its inception; and that she and the goods were liable to seizure at the instant it commenced. (Halleck on International Law, chap. 21, sec. 11, p. 504; 1 Kent's Commentaries, p. 85, note a, 8th edition; 1 Duer on Insurance, p. 568, sec. 13; Jecker v. Montgomery, 18 Howard, 110, 115; 2 Wildman's International Law, 20; The Jonge Pieter, 4 Ch. Rob., 79; The Richmond, 5 Ch. Rob., 325; The Maria, 5 Ch. Rob., 365; The William, 5 Ch. Rob., 385; The Nancy, 3 Ch. Rob., 122; The United States, Stewart's Adm. Rep., 116; The Thomyris, Edward's Adm. Rep., 17; The Joseph, 8 Cranch, 451.)

In reference to this very case of the Peterhoff, the Foreign Office of Great Britain, in a letter to her owner, on the 3d of April, 1863, announced as its conclusion, after having communicated with the law officers of the Crown, that the government of the United States has no right to seize a British vessel *bona fide* bound from a British port to another neutral port, unless such vessel attempts to touch at, or has an intermediate or contingent destination to, some blockaded port or place, or is a carrier of contraband of war, destined for the enemy of the United States; that her Majesty's government however, cannot, without violating the rules of international law, claim for British vessels, navigating between Great Britain and such neutral ports, any general ex-

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emption from the belligerent right of visitation by the cruisers of the United States, or proceed upon any general assumption that such vessels may not so act as to render their capture lawful and justifiable; that nothing is more common than for those who contemplate a breach of blockade, or the carriage of contraband, to disguise their purpose by a simulated destination and by deceptive papers; and that it has already happened, in many cases, that British vessels have been seized while engaged in voyages apparently lawful, and have been afterwards proved, in the prize courts, to have been really guilty of endeavoring to break the blockade, or of carrying contraband to the enemy of the United States.

So, also, the inception of the voyage completes the offence; and, from the moment that the vessel, with the contraband articles on board, quits her port on the hostile destination, she may be legally captured. It is not necessary to wait until the goods are actually entering the enemy's country; but the voyage being illegal at its commencement, the penalty immediately attaches, and continues so long as the illegality exists. (Halleck on International Law, chap. 24, sec. 7, p. 573; 2 Wildman's International Law, 218; 1 Duer on Insurance, 626, section 7; *The Imina*, 3 Ch. Rob., 167; *The Trende Sostre*, 6 Ch. Rob., 390, note; *The Columbia*, 1 Ch. Rob., 154; *The Neptunus*, 2 Ch. Rob., 110.)

The new course of trade to which the present war has given rise is notorious; and this court has abundant evidence in regard to it upon its own records. Neutral vessels, almost always under the British flag, are cleared from England, with papers giving an ostensible destination, for both vessel and cargo, to Cardenas, in Cuba, or Nassau, N. P., or Matamoras, on the Rio Grande, in Mexico, all in neutral waters. Those destinations are used merely for call or trans-shipment, either as a new point of departure for a further voyage of the same vessel to a port of the enemy, or as a place of trans-shipment of the cargo to another vessel, in which it may enter the country of the enemy, the cargo being composed, in almost every instance, more or less, of articles contraband of war. Numerous cases have been before this court in which this course of trade has been developed, and it has been a subject of comment in the British Parliament. Earl Russell, in the House of Lords, on the 18th of May, 1863, alluded to it as a well known fact, that vessels had been sent from England to Nassau, "in order to break the blockade at Charleston, Wilmington, and other places, and carry contraband of war into some of the ports of the southern States;" and he

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remarked that, in a case of simulated destination, that is, a vessel pretending that she is going to Nassau, when she is in reality bound to a port of the enemy, the right of seizure exists. So, too, in the House of Commons, on the 29th of June, 1863, the then solicitor general of England, (Sir Roundell Palmer,) referred to the cases of *The Dolphin* and *The Pearl*, and remarked, that the principles of the judgment in the case of *The Dolphin* were to be found in every volume of Lord Stowell's decisions; that it was well known to everybody that there was a large contraband trade between England and America by way of Nassau; that it was absurd to pretend to shut their eyes to it; and that the trade with Nassau and Matamoras had become what it was in consequence of the war. A prize court will not shut its eyes to a well-known and obvious system of conducting trade with the enemy in contraband articles. Nor, in a case like the present, where the demand of the enemy of the United States, for articles contraband of war, was so largely increased by the sealing up, by means of the blockade, of the enemy's ports on the Atlantic coast, and where so great a need of cotton existed in England, which could not be supplied to any great extent from the country of the enemy, except from the cotton fields of Texas, through the Rio Grande, can the court fail to recognize the existence of special reasons for the adoption of such a course of trade as appears, by the evidence, to have been adopted in the case of *The Peterhoff*. (*The Rosalie and Betty*, 2 Ch. Rob., 343)

The representation, upon the papers of the *Peterhoff*, of the neutrality of her voyage, are, of course, not conclusive; and it is claimed on the part of the government that the evidence shows that her voyage was being prosecuted in bad faith, and under illusive semblances, and that the intent and purpose of her owner were, that her cargo should be taken from her at the mouth of the Rio Grande by lighters, and be landed in the country of the enemy; that she drew too much water to cross the bar at the mouth of the river, and could never reach the port of Matamoras; that her cargo was composed very largely of articles contraband of war; that it was intended, on her departure from England, that these articles, and all the rest of her cargo, should be landed from her in the country of the enemy; and that the evidence in the case is such as to require the condemnation, not merely of the contraband articles, but of the rest of the cargo, and of the vessel herself.

I have already very fully analyzed the documents found on board of the *Peterhoff*, the contents of her cargo, and the testimony of the witnesses. I shall, therefore, content myself with stating the conclu-

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sions on the various questions of fact to which my mind has been brought by the entire evidence. In the examination which I have made of the case, I have derived valuable assistance from the printed arguments furnished me by the learned district attorney, and by the special counsel for the captors.

The Peterhoff, a steamer of the burden of 669 tons, laden with a cargo of assorted merchandise at London, left that port early in January, 1863, documented for a voyage to Matamoras, upon the Rio Grande, in Mexico. She was built in Great Britain, and her registered owner is Joseph Spence, of London, ship-builder. Prior to her present voyage, she was owned by a person named Pearson, of Hull, England, whose name is familiar to this court, from its records, as a person heretofore largely engaged in supplying contraband goods to the enemy of the United States, and in sending out vessels to run the blockade. On the voyage immediately preceding her present one, she carried a cargo of cotton from Nassau to Liverpool. Under the agency of James I. Bennett & Wake, as brokers, acting in behalf of Joseph Spence, or his firm of Pile, Spence & Co., her cargo, on her present voyage, was laden by a large number of shippers, all of them British subjects, with the exception of Samuel J. Redgate, who is a citizen of the United States, and was a resident of Texas at the time of the breaking out of the war. The shippers of the cargo were, according to the bills of lading, twenty-six in number, the bills of lading being thirty-nine in number. Of the bills of lading, nine were indorsed to Robert Bowden, a passenger, four to George W. Almond, a passenger, three to Captain Jarman, the master of the Peterhoff, two to Samuel J. Redgate, a passenger, two to Samuel J. Redgate & Co., and one to Samuel J. Redgate and George W. Almond. Of the remaining eighteen bills of lading, nine were indorsed in blank, and were found in the possession of the master or of some of the passengers, two of these nine being shipments by Samuel J. Redgate, and two of them being shipments by J. Spence. There were, in addition, one bill of lading, not indorsed, of goods shipped by Captain Jarman, and eight bills of lading, not indorsed, of which no duplicates were found on board, and which were also found in the possession of the master or of some of the passengers. Duplicates were found of thirty of the bills of lading, and of one of them, (being one of a shipment by Samuel J. Redgate, indorsed in blank,) there were four sets found.

The entire number of packages found on board, excluding five cases of samples, was 4,472. Of these, 533 were covered by the bills of



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lading indorsed to Bowden, 772 by those indorsed to Almond. 143 by those indorsed to Captain Jarman, 155 by those indorsed to Redgate, 72 by those indorsed to Redgate & Co., 501 by the one indorsed to Redgate and Almond, 1,878 by those indorsed in blank. (of which latter the number of packages shipped by Redgate was 379, and the number shipped by J. Spence was 1,432,) 403 by those not indorsed, and of which there were no duplicates, and 15 by the one not indorsed, and in which Captain Jarman was the shipper.

While proceeding on her voyage, and going towards St. Thomas for a supply of coal, the Peterhoff was, on the 20th of February, 1863, overhauled by the United States steamer Alabama, and, after her papers had been examined, allowed to proceed to St. Thomas. On the 25th of February she left St. Thomas, and was overhauled by the Vanderbilt. Her papers were examined by the boarding officer, who immediately returned to the Vanderbilt, leaving directions that the Peterhoff should remain stationary while he communicated with his commander. Shortly afterwards the boarding officer returned to the Peterhoff, and gave to Captain Jarman a message from the commander of the Vanderbilt, to the effect that the captain should proceed, with the papers of his vessel, on board of the Vanderbilt. Captain Jarman refused to do so. The officer again returned to the Vanderbilt, and, shortly afterwards a sufficient force from that vessel was sent on board of the Peterhoff to take possession of her. Shortly afterwards another officer from the Vanderbilt demanded the papers of the Peterhoff, to take on board the Vanderbilt, and the demand was refused. The Peterhoff was immediately sent to Key West as a lawful prize, and thence to New York.

A claim to the vessel and cargo was put in by Captain Jarman, on behalf of their owners, but that claim disclosed no name of any owner.

The claim of Mr. Mackie, the agent at New York of the English underwriters, in averring the ownership of the steamer and her cargo by the underwriters, necessarily implies that the vessel and her cargo were insured from loss by capture, and that the ownership of the vessel and cargo was vested in the underwriters by virtue of an accepted abandonment after a loss by capture. The copy of the policy of insurance, found on board of the vessel, (if it be entitled to be regarded as a copy of a complete policy,) purports to be a policy on the hull and machinery of the vessel, and contains the clause, "warranted free from capture, seizure, detention, and all consequences of hostilities." This, as far as it goes, is consistent with the claim put in by Mr. Mackie, as

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the underwriters could have no claim to the vessel and cargo, in consequence of their capture, unless they had been insured by the underwriters against loss by capture, and unless the title to them had vested in the underwriters, by reason of an abandonment after a loss by capture. So, too, the claim by the underwriters admits the lawfulness of the capture; for without a lawful capture there could be no condemnation and no loss; and the averment of the ownership by the underwriters, which ownership could only arise in consequence of an accepted abandonment, admits a lawful capture of the insured steamer and cargo, and that they were subject to lawful condemnation.

The claim of Redgate is, as owner, agent, and consignee, to \$175,000 in value of the cargo. According to the appraisement by the prize commissioners, which was about \$257,000 for the whole cargo, the value of the goods on board, covered by the bills of lading indorsed to Redgate, Redgate & Co., and Redgate and Almond, and by the bills indorsed in blank, in which Redgate was the shipper, was less than \$23,000. Almond, in his claim, claims, as owner, agent, and consignee, cargo to the value of \$150,000, while, according to the valuation by the prize commissioners, that part covered by the bills of lading indorsed to him was valued at only a little over \$55,000. According to the valuation by the prize commissioners, that part covered by the bills of lading indorsed to Bowden was valued at over \$113,000. As no claim was interposed by Bowden to any part of the cargo: and as Captain Jarman only claims the cargo for its owners generally: and as no claims to any portions of the cargo were put in, except those by Redgate and Almond; and as there was cargo of the value of over \$50,000, according to the valuation by the prize commissioners, covered by bills of lading indorsed in blank, (exclusive of what was shipped by Redgate,) and by bills of lading not indorsed, it would seem to follow, necessarily, that Redgate must have had control over large portions of the cargo which were not covered by bills of lading in which he was the shipper, or by bills indorsed to him. Indeed, he says, in his answer to the 9th interrogatory, on his re-examination, that he acts as agent for the portion of the cargo represented by the bills of lading indorsed to Bowden; and, in his claim, he claims as owner, agent, and consignee. At the valuation by the prize commissioners, the value of the cargo covered by the bills indorsed to Bowden, and those indorsed to Redgate, Redgate & Co., and Redgate and Almond, and those indorsed in blank, in which Redgate was the shipper, and thus the value of what is confessedly represented by Redgate, is

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nearly \$136,000, or more than one-half of the entire valuation by the prize commissioners. Redgate does not state in his claim what specific portions of the cargo he claims as owner, nor what as agent, nor what as consignee. There can be no doubt whatever that Redgate must be regarded as a citizen of the enemy's country, within the decisions of the Supreme Court in *Jecker v. Montgomery*, (18 Howard, 110,) and in *The Prize Cases*, (2 Black, 635,) although he calls himself a citizen of the United States, and says that he resides in Matamoros. He was a citizen of the United States, residing in Texas, at the time of the breaking out of the war, and he never has owed any allegiance either to Mexico or to Great Britain. Upon this principle, all the cargo on board of the Peterhoff which was owned by Redgate, or was in his custody and charge for the time being, is confiscable as enemy's property. It is, also, a well-established principle, that a citizen of the enemy's country, as Redgate was, cannot appear as a claimant, because he has no *persona standi* in court. (Halleck on International Law, ch. 31, § 23, p. 772; 3 Phillimore on International Law, § 461; *The Falcon*, 6 Ch. Rob., 199.)

Almond's claim is on behalf of himself, as owner, agent, and consignee, to cargo of the value of \$150,000.

It is to be noted, that while Captain Jarman, in his test oath to his general claim to the vessel and her cargo, on behalf of their owners, says that the vessel and cargo will belong, if restored, to subjects of Great Britain, yet neither Redgate nor Almond, in their claims or test oaths, make any averment that any of the cargo represented by them as agents or consignees will belong, when restored, to subjects of Great Britain, although great pains are taken, in the testimony, to show that the shippers named in the bills of lading were British subjects.

The witnesses, all of them, admit their knowledge of the war, and of the blockade, by the naval forces of the United States, of the ports of the enemy.

Captain Jarman and the passengers, Bowden, Almond, and Redgate, all of them declare that the Peterhoff had no goods on board contraband of war. All of these four witnesses, except Bowden, were interested personally, as owners, in portions of the cargo, and large portions of the cargo were in the charge of them and of Bowden, by indorsements to them of bills of lading. But Tregidgo, the third officer, specifies, as contraband, boots and shoes, army clothing, and medicines; and Duffay specifies smiths' anvils and bellows.

Captain Jarman swore, on his first examination, that no papers connected with the voyage, the ship, or the cargo, were destroyed; that

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all the papers that were on board of the vessel at her last clearing port were in the hands of the prize commissioners; that he tore up some letters from his wife and father at the time of the capture; but that, with that exception, none were destroyed, concealed, or in any way disposed of, to his knowledge, by any person. Redgate and Bowden testified that they knew nothing of any papers being burned, torn, thrown overboard, destroyed, cancelled, or attempted to be concealed. Almond mentioned the destruction, by order of Captain Jarman, of a package which was in charge of Mr. Mohl, a passenger, but he said he was ignorant of its contents, and he fixed the time of its destruction as being the morning of the day the Peterhoff arrived at St. Thomas, but could not say whether it was before or after she was overhauled by the Alabama. The officers and crew of the vessel, on their examination, disclosed a very different state of facts in regard to this package, and in regard to the destruction of papers, which testimony I shall particularly refer to hereafter. It showed clearly that papers were thrown overboard by order of Captain Jarman, after the Peterhoff had been boarded by the Vanderbilt, and while the boarding officer was absent to procure a prize crew from the Vanderbilt. Thereupon, Captain Jarman had his attention directed, by the prize commissioner, to the 20th interrogatory, it being again read to him, with his answer to it. He then stated to the prize commissioner the circumstance of the throwing overboard of the package received from Mohl, and said that it contained white powder, and that Mohl was unwilling that it should be opened, because of its being patented. Captain Jarman gives as an excuse for not mentioning, at his first examination, the circumstance of the throwing overboard of this package, that he considered the 20th interrogatory to apply to letters, bills of lading, or papers connected with the ship or cargo; and it is claimed, on his behalf, that his reply to the prize commissioner, when asked, at the interview subsequent to his first examination, if he desired to add to or alter his answer to the 20th interrogatory, that he did not desire to change or add to it, was a proper one, for the reason that, as the package contained only the patent white powder, and not papers, it was not at all relevant to the interrogatory to place on the record anything in reference to the package.

It must be borne in mind, that when Captain Jarman was thus called before the commissioner, he had not read the testimony given by the other witnesses in respect to the destruction of the papers. That testimony was, all of it, subsequently filed in court, on the 21st

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of April, 1863. On the same day, an order was made by the court that the proofs be opened. On the 27th of April, 1863, Captain Jarman, having obviously been made acquainted with the whole testimony, made his affidavit, setting forth his statement in respect to the package of white powder, for the purpose of the motion which was made by the claimants, that he be allowed to add that statement to his answer to the 20th interrogatory. He was, by order of the court, re-examined on the 16th of May on the 20th interrogatory, and on three special interrogatories. On that examination, he gives his version of the destruction of the package which he was told was white powder. What he says has been already recited at length.

There are many things about this statement of Captain Jarman which are utterly incredible, and his whole statement is full of inconsistencies. He says that he told all the passengers, before leaving Falmouth, that they would not be allowed to carry any documents, and that they all declared that they had none; that, after they left Falmouth, Mohl, a passenger, came to him and said that he had a small packet of patent white powder; that he, Captain Jarman, said to Mohl that he had better deliver it up to him, for it was a dangerous article to have on board; and that Mohl then gave it to him, and he locked it up in his state-room. Why it was thought to be a dangerous article is not stated. If it was really thought by Captain Jarman to be a dangerous article to have on board, he certainly would have thrown it overboard immediately, instead of locking it up in his state-room. He then says that nothing more was thought of it until they approached St. Thomas; that, when the Alabama approached them, he called Mohl, and told him that he did not like having the packet of powder on board, and that, if the ship was likely to be searched, it must either be opened or destroyed; that he then gave it in charge of Harris, the second officer, with orders to throw it overboard, if instructed by him; and that it was not then destroyed, because the vessel was not examined by the Alabama. He gives no reason for the obvious connection between the approach of the Alabama and his disinclination to having the package on board; or between a search of his vessel by the Alabama and his desire to throw overboard the package; or between the departure of the Alabama without examining the Peterhoff and his resolution not to destroy the package. If it was dangerous to have the package on board for any other reason, except that it contained what could not be submitted to the inspection of the officers of the Alabama, it would have been dangerous to have it on board during the

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entire voyage to St. Thomas, and as well after the departure of the Alabama as before her approach. The whole transaction clearly shows that the only danger connected with the package was the danger of having it examined by the officers of a United States vessel. And what possible danger could there be in having it so examined, unless it contained evidence of some unlawful transactions? Captain Jarman then says, that after a boat from the Vanderbilt had boarded the Peterhoff, and had left her again, ordering her to remain stationary, he called Mr. Mohl, and requested him to let him see the contents of the package; that Mohl objected to this, saying that it was a patent, and could not be seen by any one but himself and friends; and that so he, the captain, ordered it to be thrown overboard, fearing that it might jeopardize the ship in some way, and it was accordingly thrown overboard. The approach or presence of a cruiser of the United States seems to have been the only cause sufficiently powerful to draw attention to the danger of having this package on board, and it seems to have been an adequate cause to that end. Captain Jarman does not state how, according to his fear, the package might jeopardize the ship. How could it jeopardize the ship at the moment when the boat was expected back from the Vanderbilt with a prize crew, unless it was that a search of the vessel and an examination of the contents of the package would have disclosed evidence to justify the seizure and condemnation of the ship? Captain Jarman says that he believes the contents of the package to have been white powder, as stated by Mohl; and that he does not think that any one knew the contents of the package but Mohl. But Captain Jarman has no warrant manifestly for any belief as to what were the contents of the package, except what Mohl told him. Tregidgo says that Mohl told him he resided in Texas, and Reed says that when they were boarded by the Alabama, Mohl burned some note-paper with a "confederate flag" upon it. Under these circumstances it would hardly be safe to rely upon hearsay evidence, derived only from Mr. Mohl, as to the contents of the package. This entire story, as to the contents of the package being white powder, is unworthy of belief.

The fact that a package, which was given to Captain Jarman by Mohl, was destroyed is abundantly proved. Almond testifies to the fact, although he makes it to have occurred on the day they arrived at St. Thomas. But, that there was a destruction of papers, both by burning and throwing overboard, the witnesses (other than Captain Jarman and the three passengers) all agree. There is no substantial

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difference in their testimony. Harris, the second mate, who threw overboard the package, by the orders of the captain, says that it was a square paper package, and that it was thrown overboard after the first boarding by the officers of the Vanderbilt, and before the prize crew took possession. He says that Captain Jarman told him not to let any one see it; that Captain Jarman had given him that same paper parcel once before, at the time the Alabama stopped the Peterhoff, and before she was boarded by the Alabama, and had told him, at that time, to keep the parcel, and throw it overboard, if told by him, Captain Jarman, or if he, Captain Jarman, made a sign to him; and that, as he did not then throw it overboard, he gave it back to the captain. Tregidgo, the third officer, confirms this testimony of Harris, in all particulars, and adds, that Captain Jarman ordered Harris to throw it overboard from a part of the ship where it would not be observed from the Vanderbilt; that Harris did so; that he heard Captain Jarman call the packet despatches; that the packet was sewed up in canvas, and weighted with lead, so that it would sink; and that Mohl appeared very much distressed at the necessity of throwing it over. Tregidgo says that he has been a midshipman in the British navy, and is accustomed to seeing the form in which despatches are made up; that the packet so thrown overboard was put up in the same way; that there was no mark upon it, and that there was a heavy weight of lead at each end; that the first time he saw it or knew of it was when the Alabama boarded them; and that he then saw it, and saw at once that it was a packet of despatches. Campbell confirms the testimony of Harris, and says that the parcel was a sealed parcel, wrapped in brown paper, and was heavy. He also relates the arrangement for throwing the package overboard at the time of the visit of the Alabama, and says, that when the prize crew came off from the Vanderbilt he saw Captain Jarman drop the parcel overboard from the starboard gangway. Murphy, assistant engineer, shows that it was understood on board that some papers were thrown overboard by Harris, and he speaks of Webber as being aware of that fact. Webber also shows that it was understood on board, among the crew, that some papers had been thrown overboard by Harris just before the Alabama boarded them. He also says that he saw the packet that Harris was said to have thrown overboard, although he did not see him throw it over, and that it looked like a brown paper parcel. Reed confirms the testimony of Harris as to the arrangement for throwing overboard the package at the time of the visit of the Alabama, and

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as to its being thrown overboard, by order of Captain Jarman, while the boat from the Vanderbilt was coming a second time to the Peterhoff. Reed says that it was a box of papers, and that he saw the captain put the papers into the box, and that the captain told Harris to put something into the box to sink it, and to throw it overboard, on a signal, this being at the time of the visit of the Alabama; and that, after they were boarded by the Vanderbilt, he saw Harris throw the box overboard. Whatever discrepancies there may be in this testimony, the substantial fact remains, that a package, which was understood and believed, by the disinterested officers and crew on board, to be papers, was thrown overboard by the second mate, by order of the captain, when it was manifest that a prize crew was coming on board from the Vanderbilt, to take possession of and search the Peterhoff. The story of the white powder only adds to the conviction of the court, from all the evidence, that this package contained papers which it was important to destroy, for the reason that they would have shown that the Peterhoff and her cargo were liable to seizure and condemnation.

But there is testimony as to the destruction of other papers. Duffay says that Webber, the steward, gave him a package of papers, or something that was printed, which looked like a book "that had been tossed from a great many hands," and told him to burn it; that he did so; that he does not know its contents; and that this was about the time the Vanderbilt captured them, and while they were outside of the harbor of St. Thomas, after having been in. Webber says that he gave Duffay, to burn, some newspapers belonging to Mohl, who gave them to him, Webber, to be burned, and that he, Webber, gave them to Duffay, and told Duffay to burn them. Murphy, the assistant engineer, says that he heard on board that some papers had been destroyed by Duffay. Tregidgo says that some written papers were burned by Duffay. Reed says that Webber was sent by the captain with a bundle of papers to Duffay to burn. Whatever it was that was burned by Duffay, the burning seems to have been caused by the visit of the Vanderbilt. And, unless it clearly appears exactly what the writings were that were burned, the presumption as to what was burned by Duffay, as well as to what was thrown overboard by Harris, must be taken most strongly against the claimants. Duffay calls it "a package of papers, or something that was printed," and says "it looked like a book." He had it in his possession, apparently, longer than any other of the witnesses. Reed calls it a "bundle of



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papers." Tregidgo calls it "written papers." Webber calls it "news-papers." It is quite apparent, also, that what was thrown overboard by Harris, and what was burned by Duffay, came from the possession of Mohl.

But there is further evidence, showing that Captain Jarman recognized the necessity, in view of a search of his vessel, of destroying certain papers. Webber, the steward, says that after the *Peterhoff* had been boarded by the *Alabama* or the *Vanderbilt*, the captain gave him a small package of papers, on blue foolscap sheets, about two sheets, and told him that if he, the captain, was taken out of the ship, he, Webber, must tear up and destroy those papers; but that he handed the papers back to the captain several hours afterwards, and did not destroy them. In this testimony Webber is confirmed by Reed, who says that, when Webber returned from giving to Duffay the papers to be burned, the captain gave Webber two papers to hide, and that, in case the captain was taken out of the ship, then Webber was told to destroy them, and the captain made a motion with his fingers as if to tear them; and that this occurred in the pantry. It is very clear, therefore, that Captain Jarman felt the necessity of destroying papers. Under these circumstances, the presumption would be, not only that he destroyed the papers which he thus handed to Webber, but that the package which was thrown overboard, under such a pressing exigency, contained papers.

The only testimony contained in the evidence of the witnesses, as to the destination of the cargo, other than what results by implication from their averments that the vessel was bound to Matamoras, is in the evidence of Tregidgo, who says that he heard Heyck, one of the passengers, say that the cargo was to go across the river from Matamoras into Texas; and that he is very confident of this.

I have already particularly referred to the various papers found on board of the vessel. The register, the shipping articles, the invoices, the bills of lading, and the clearance, all of them appear fair on their faces. I have also alluded to the fact that there were no invoices of the thirty sets of artillery harness, the buckles, or the bagging, or the drugs consigned to Burchard & Co., of Matamoras. What may have been contained in the mail which was on board has not been made known, for the reason that the mail was delivered up unopened. No letter of instructions to Captain Jarman was found on board, nor any letters to any consignees, nor were there found on board any letters giving any instructions to any person in regard to any disposition of

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the cargo of the vessel, unless such letters may have been in the mail bag. Almond says that he had no consignees, but was to select his own, and that he had no written instructions; and Redgate says that he had no letters and no instructions as to the mode of disposing of the cargo.

"By the manifest, all the goods are specified as consigned "to order," except the packages addressed to Burchard & Co.; and, by reference to the bills of lading, it appears that in all cases where they were indorsed specially to the order of any person, the indorsee was a passenger on board of the vessel, having the care of that portion of the cargo. The manifest, although it contains a printed heading, "description of goods," has, under that head, no designation whatever of any article of merchandise, whether contraband or otherwise, but only specifies, under that head, so many boxes, bales, cases, kegs, coils, packages, casks, bundles, chests, and trunks, except in some unimportant instances. In one instance, in the thirteenth item in the manifest, which now reads, under the head of "description of goods," "145 coils," the word "rope" was at first written after the words "145 coils," and it can still be read, under a very heavy erasure with ink. And although afterwards, in the manifest, there are found specified in different places, 50 coils, 45 coils, and 20 coils, yet the word "rope" does not appear now after any one of those entries, nor does it appear ever to have been written there. Rope and cordage are well settled to be contraband articles, as much so as arms; and the invoices of these 260 coils of rope show 215 of them to have been Manilla rope, and the rest tarred hemp rope.

The bills of lading contain, every one of them, carefully written in it, a statement that the Peterhoff is bound for "off the Rio Grande, Gulf of Mexico, for Matamoras;" and also, in writing, the following: "Goods to be taken from alongside the ship, at the mouth of the Rio Grande, at consignees' risk and expense, within 30 days of arrival, providing lighters can cross the bar, or a penalty will be incurred of ten pounds per day after that period;" also, in writing, a provision that the goods are to be delivered "off the Rio Grande, Gulf of Mexico, for Matamoras;" also, in each case, except the bill of lading for the 52 packages addressed to Burchard & Co., that the goods are to be delivered "unto order," and, in that excepted instance, that they are to be delivered "unto Messrs. Burchard & Co., successors, Matamoras." The court will take judicial cognizance of the well-known facts, that Matamoras lies on the right bank of the Rio Grande,

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the river which forms the boundary line between Mexico and the United States at that point, several miles up from the mouth of the river, and nearly opposite the town of Brownsville, in Texas; that the river is very narrow at that place; and that, at the mouth of the river, is a bar, which at all times prevents the entrance into the river of a vessel drawing as much water as the *Peterhoff*; she drawing, as was admitted by the counsel for the claimants at the hearing, about sixteen feet. In this view, the provision in the bills of lading, that the goods are to be taken from alongside of the ship, by means of lighters, at the mouth of the Rio Grande, becomes intelligible, making it apparent that the vessel was not to go herself to Matamoras, but was to go no further than the mouth of the Rio Grande. And, from the language of the provision in the bills of lading, it would seem that there were times when even lighters could not cross the bar at the mouth of the river.

There are some things, in respect to the log-book of the *Peterhoff*, which are quite open to observation. It commences on the 30th of November, 1862, and the entries, from that time to the 5th of December, 1862, covering three pages, are filled with a voyage from Liverpool to London; and the heading across the tops of those pages describes the log as one of a voyage from Liverpool towards London. The heading of the next two pages describes the log as being a log of the steamer while lying in London harbor. The next six pages have no headings whatever. They embrace the period from December 16, 1862, to January 7, 1863, both inclusive. The entries during that time show that the vessel was lying at London, taking in cargo. The next two pages, covering the entries of January 8 and 9, 1863, have this heading: "Log of the S. S. *Peterhoff*, from London towards Plymouth," some word having been erased over which the first half of the word "Plymouth" is written. The next page, embracing the entries of January 10 and 11, has the heading: "Log of the S. S. *Peterhoff*, lying in Plymouth." The next page, embracing the entries of January 13, 14, and 15, has no heading. The next page, embracing the entries of January 16 and 17, has the heading: "Log of S. S. *Peterhoff*, lying in Plymouth." The next two pages, embracing the entries of January 18 and 19, have, each of them, the heading: "Log of the S. S. *Peterhoff*, from Plymouth," the latter one of these two pages being a left-hand page, and there being no heading to the next right-hand page. And there is no further heading whatever in the book, over any of the entries in it, which extend from January 20 to March 9. Upon the

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title-page of the log-book there appear printed the words, "A log-book containing the proceedings on board the;" then written, the words "S. S. Peterhoff;" then printed, the words "from the port of;" then written, the word "London;" then printed, the word "to;" then written, the word "Matamoras;" then printed, the words "commanded by;" then written, the words "Capt'n S. Jarman, R. N. R.;" then printed, the word "commencing," the blank after which is not filled; then printed, the word "ending," the blank after which is not filled; then printed, the words "kept by;" then written, the words "H. Bound." Notwithstanding this title-page, the voyage with which the log-book commences is one from Liverpool to London, occupying from November 30, 1862, to December 6, 1862, at which date she arrived at London. She remained at London until the 7th of January. All the entries in the log-book, from its commencement to and including the 18th of December, 1862, covering five pages and a half, are signed "Hugh Ewing," who, it is presumed, was her mate at that time. The entries in the handwriting of Bound do not commence till the 19th of December, and all the rest of the entries in the book are in his handwriting, and at the close of the last entry, on the 9th of March, is his signature. It results, then, that there is no indication or suggestion, anywhere in the log-book, as to any destination of the vessel after she left Plymouth, except what may be gathered from the entry on the title-page, and that is the title-page of a log-book, the first voyage in which is one from Liverpool to London. There is no evidence as to when the entry on the title page was made. It is manifestly in the handwriting of Bound, and, of course, was made after he joined the vessel at London. But whether it was made before or after the capture of the Peterhoff by the Vanderbilt cannot be known, because Bound continued his entries in the log-book until and including the 9th of March, which was two days after the Peterhoff came to anchor at Key West, she having been captured on the 25th of February. Aside from the title-page, there is not a word in the log-book, either in the heading of any page or in the body of the entries, to indicate to the officers of any cruiser examining it, whither she was bound on the voyage on which she was captured; nor is Matamoras or the Rio Grande anywhere mentioned in the entries in the log.

The utter absence, from the manifest and bills of lading, of any satisfactory information as to the true contents of the packages on board of the Peterhoff, composing her cargo, induced the making of the order for the discharge and inspection of her cargo. The court has, in the

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official report of the commissioners, filed June 2, 1863, an inventory of the contents of the cargo, being the result of the opening and examination of a sufficient number of packages to show what was on board. The commissioners reported that there were 4,472 packages of cargo, exclusive of five cases of samples. They also reported that a large portion of the cargo was "particularly adapted to army use;" that large numbers of cases contained "*Blucher boots*," known as "*army shoes*;" that a number of cases contained "*cavalry boots*," so labelled—a label annexed to the report, from one of the trunks of boots, specifying its contents as "100 army Bluchers," and one annexed, from another trunk, specifying its contents as "36 cavalry boots;" that 192 bales of the cargo consisted of "*gray blankets*," "adapted to the use of an army," and believed to be such as are used in the United States army; that 95 cases contained horseshoes of a "*large size*;" that 36 cases, of a large size, contained "*artillery harness*," in sets for four horses, with two riding-saddles attached to each set; that there were also on board "*two hydraulic presses*," in pieces, adapted for "*cotton*," and that a considerable portion of the cargo consisted of drugs, directed, "Burchard & Co., successors, Matamoras, Mex'o," in which, among an assorted lot of drugs, quinine, calomel, morphine, and chloroform formed an important portion. The inventory annexed to the report filed June 2, 1863, shows that, in addition to the articles thus particularly referred to by the commissioners, there were found 305 coils of rope, (45 of the coils mentioned in the manifest consisting each of two coils of rope,) 501 boxes of tin, 29 casks of sheet zinc, 1,343 bundles of hoop iron, 280 bundles and bars of steel or iron, 42 anvils, 60 blacksmiths' bellows, and some quinine and assorted drugs. An examination of the invoices found on board of the Peterhoff shows that the number of pairs of Bluchers and Blucher boots found on board was 14,450, of which 1,000 pairs are called, in the invoices of them, "men's army Bluchers;" that the number of pairs of long artillery boots was 180; that there were 5,580 pairs of the gray blankets, of which 2,000 pairs are called, in the invoices of them, "government regulation gray blankets;" that the quantity of horseshoes contained in the 95 casks was 9 tons; that of the 305 coils of rope, 90, weighing over 5 tons, were tarred hemp rope, and 215, weighing about 11 tons, were Manilla rope, the weight of the 305 coils being about 16 tons; that the 29 casks of sheet zinc weighed about 14 tons; and that the 1,343 bundles of hoop iron were of the weight of 34 tons. No invoices were found of the 36 cases of artillery harness, but the appraise-

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ment report of the prize commissioners, of November 19, 1863, shows that there were 30 complete sets of russet artillery harness for four horses, contained in 30 cases, and that the 6 other cases contained 258 heavy russet artillery halters, and 600 galvanized halter chains. Nor were there any invoices of the drugs consigned to Burchard & Co., but the appraisement report of November 29, 1863, shows that those drugs consisted of 2,300 ounces of quinine, 1,000 pounds of calomel, 245 pounds of chloroform, and sundry other drugs. The invoices on board also show that, including the quinine and assorted drugs mentioned in the report filed June 2, 1863, there were, in addition to the drugs consigned to Burchard & Co., the following drugs: 340 ounces of quinine, 20 pounds of chloroform, 16 pounds of opium, 38 ounces of morphine, and various other drugs; that there were, also, 200 pairs of shoes, which the invoice of them calls "negro brogans;" and, also, 379 yards of blue military cloth and blue military serge, 307 pieces of scarlet, white, and blue bunting, several saddles, bridles, and saddle-cloths, a quantity of harness-rings, harness-buckles, bridle-buckles, martingale-rings, and trace-chains, 1,559 yards of gunny cloth, 1,988 yards of stout cotton wrapping, 52,000 horseshoe nails, 3½ tons of nails, 42 anvils, weighing 4½ tons, 644 bars of cast steel, and some waist belts and ball bags.

The remark of the commissioners, in their report filed June 2, 1863, is, that a very large portion of the cargo was particularly adapted to army use; and this observation is fully warranted, in view of the quantities of Bluchers and Blucher boots, cavalry, and artillery boots, gray blankets, horseshoes, military cloth, sets of artillery harness and saddles and bridles, to say nothing of the coils of rope, tin, sheet zinc, hoop iron, steel, anvils, and blacksmiths' bellows, and quinine, chloroform, morphine, opium, and other drugs, all of which were not only useful for army purposes, but were, many of them, articles of which there was great need in the army of the enemy, by reason of the stringency of the blockade of their ports.

It is laid down by all writers on international law, that implements and munitions of war, which, in their actual condition, are of immediate use for warlike purposes, are to be deemed contraband whenever they are destined to the enemy's country, or to the enemy's use. (Halleck on International Law, chapter 24, section 13, page 577; 3 Phillimore on International Law, section 229.) By the treaty of commerce between France and Denmark, in 1742, cordage was declared to be contraband; and, by the treaty of 1801, between Great Britain

and Russia, to which Denmark and Sweden subsequently acceded, saddles and bridles were enumerated as contraband, the list being further augmented, by the convention of July 25, 1803, by the addition of equipments for cavalry. (Halleck on International Law, chapter 24, section 16, page 580) The 18th article of the treaty of November 19, 1794, between the United States and Great Britain, (which treaty is no longer in force,) enumerated the articles which, in future, should be esteemed contraband of war, and specified, among those articles, horse furniture, holsters, belts, and generally all implements of war, as also cordage, and generally whatever might serve for the equipment of vessels, excepting, however, wrought iron; and declared that those articles should be just objects of confiscation whenever they were attempted to be carried to the enemy. (8 U. S. Stat. at Large, 125.) The law of prize, as universally established by the prize courts of Europe and the United States, declares that all instruments and munitions of war are to be deemed contraband, and that rule is held to embrace, by its terms and by fair construction, among other articles, all military equipments and military clothing. (Halleck on International Law, chap. 24, sec. 20, p. 583, and authorities there cited.) It is, also, an established doctrine of the English Admiralty, that all manufactured articles, which, in their natural state, are fitted for military use, or for building and equipping ships-of-war, among which articles cordage is included, are contraband in their own nature, to the same extent as instruments and munitions of war, and no exception is admitted in their favor, except by express provisions of treaty. (Halleck on International Law, chapter 24, section 21, page 584, and authorities there cited; *The Charlotte*, 5 Ch. Rob., 305; *The Neptunus*, 3 Id., 108; 2 Wildman's International Law, 212.)

These principles assign, without any question, to the list of contraband articles found on board of the *Peterhoff*, as being instruments of war, if they were destined to the use of the enemy or to the enemy's country, the following articles, being either military equipments, military clothing, manufactured articles fitted, in their natural state, for military use, or cordage, namely: the 14,450 pairs of Bluchers and Blucher boots, the 180 pairs of long artillery boots, the 5,580 pairs of gray blankets, the 30 sets of artillery harness, and their accompaniments of halters and halter-chains, the saddles, bridles, saddle-cloths, waist-belts, and ball-bags, and the 305 coils of rope. It is also claimed, on the part of the libellants, that the horseshoes contained in the 95 casks, and which the report of the commissioners describes as horse-

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shoes of a large size, were designed for the cavalry service of the enemy, and were wholly unsuitable for any such existing service in Mexico; that the anvils and blacksmiths' bellows were such as accompany army forges; and that those articles, together with the tin, sheet zinc, hoop iron, and cast steel, the 2,640 ounces of quinine, 265 pounds of chloroform, 1,000 pounds of calomel, 16 pounds of opium, 38 ounces of morphine, and other drugs, and the blue military cloth, if not necessarily contraband in themselves, under all circumstances, must, in view of the quantities of them found on board of the Peterhoff, and the demand existing for some if not all of them, for the use of the army and navy of the enemy, be considered as contraband in the present case, if they were going to the country of the enemy. I do not intend to hold that any of these articles are contraband, other than such as come under the head of military equipments, military clothing, manufactured articles fitted, in their natural state, for military use, and cordage, although strong reasons might be urged for including many of the other articles named within the list of contraband, under the circumstances surrounding this case.

It is said, in Moseley on Contraband of War, (p. 9,) "The tendency of all the recent authorities, both in works written on the subject and in judicial decisions, especially the decisions of Sir William Scott, goes to show that contraband or not contraband of war is a question of evidence, to be determined in each case by reference, not to one particular rule of law, but many; not to any one fact, however strong that may be, but to all the circumstances connected with the goods in question. It is not only, or not so much, whether the goods are, in themselves, or as belonging to a class, capable of being applied to military or naval use, but whether, from all the circumstances connected with them, those very goods are or are not destined for such use." It is also laid down by high authority, that the probable use of articles is inferred from their destination; and that, if articles capable of military use are going to a place where any need of their employment in military use exists, it will be presumed that they were going for military use, although it is possible that they might have been applied to civil consumption. (Halleck on International Law, chapter 24, sections 23, 24, pages 586, 587; 1 Kent's Commentaries, 140; 3 Phillimore on International Law, section 254.) The large quantities of the articles found on board of the Peterhoff which are claimed to be contraband, and which are not strictly military equipments, or military clothing, or manufactured articles which, in their natural state, are



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fitted for military use, is a circumstance worthy of consideration, on the question as to whether those articles were probably intended for the ordinary uses of life, or were destined for military use. This remark applies with great force to the horseshoes, of which there were 95 casks, containing 9 tons, and to the drugs, among which there were 2,640 ounces of quinine, 265 pounds of chloroform, and 1,000 pounds of calomel.

As none of the articles alleged to be contraband can be so, unless they were going to the country of the enemy, the question of their destination is vital. If a hostile destination can be certainly assigned to one portion of this cargo, and that a portion which was under the charge of Captain Jarman, and of the passengers, Redgate, Almond, and Bowden, a like destination can properly be assigned to all the articles composing the cargo, as they were all of them under the charge of Captain Jarman and those passengers. For I am led to the conclusion, upon the whole evidence, that there was a concert of action between Captain Jarman and those three passengers, in respect to the cargo. Bowden has put in no claim to any part of the cargo, but has made Redgate his agent, by power of attorney, in reference to the part of the cargo represented by the bills of lading indorsed to him, Bowden; and Captain Jarman put in a claim to the vessel and the entire cargo, "for the interest of his principals, the owners of the steamer Peterhoff, her tackle, &c., and cargo." The same kinds of articles are found to have been covered by the bills of lading indorsed to Captain Jarman and to the three passengers. Thus, by the bills indorsed to Bowden, are covered 500 pairs of brown-gray blankets, 700 pairs of Blucher boots, and 1,122 pairs of Bluchers; by the bills indorsed to Almond, 2,000 pairs of gray blankets, 7,128 pairs of Bluchers, 20 coils of Manilla rope, and a quantity of martingale-rings, bridle-buckles, straps, waist-belts, and ball-bags; by the bills indorsed to Redgate & Co., a quantity of halter-chains, harness-buckles, martingale-rings, bridle-buckles, trace-chains, riding-saddles, bridles, and saddle-cloths; by the bills indorsed to Redgate, 145 coils of Manilla rope; by the bills indorsed to Captain Jarman, 2,000 pairs of government regulation gray blankets, 50 coils of Manilla rope, 140 ounces of quinine, 20 pounds of chloroform, and a quantity of morphine, opium, and other drugs; and by the bills indorsed in blank, in which J. Spence is named as the shipper, (he being the owner of the Peterhoff.) 90 coils of tarred hemp rope, and a cotton press. The invoices of that rope and cotton press, and of the 10 bales of gunny cloth and the 13

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bales of cotton wrapping, marked "Peterhoff owner," are all on the same sheet, and are each headed thus: "Adventure to Matamoras, per S. S. Peterhoff, to Pile, Spence & Co., Dr."

Joseph Spence, the owner of the Peterhoff, was one of the firm of Pile, Spence & Co. That firm is spoken of by several of the witnesses as the owners of the Peterhoff, and it is that firm that is named in the papers found on board as the owners of the cotton press or presses, and of the gunny cloth and cotton wrapping, and of 90 of the coils of rope. J. Spence is named as shipper in the bill of lading covering the cotton press, the packages containing which were marked "P. S. & C.," and are specified in the bill of lading as "11 packages hydraulic press." Under another bill of lading, Mr. Spence was the shipper of 362 packages of merchandise, which contained 90 coils of tarred hemp rope, and large quantities of hardware, and the smiths' bellows and anvils. The cotton press is described by the prize commissioners, in their appraisement report of November 19, 1863, as one hydraulic press, 8-inch cylinder, with bed-plate and braces, 2 heavy iron-bound boxes for pressing cotton, 4 bars of railroad iron, and 8 car wheels, all in 11 packages, with 4 other packages containing iron implements, in bagging, supposed to be the same mark. The commissioners, in their report filed June 2, 1863, speak of there having been on board two hydraulic presses, in pieces, adapted for cotton. There was an invoice found on board, showing that Pile, Spence & Co. bought of J. Bowes, of Manchester, December 24, 1862, "1 hydraulic press, with ram to lift 4 feet, and set of pumps complete," for £170, and "2 birch railway boxes, bound with iron, and fitted up with wheels, stillages, rails, &c.," for £75, being a total, less 1½ per cent. discount, of £241 6s. 6d. The bill of the cotton press above referred to, headed, "Adventure to Matamoras, per S. S. Peterhoff, to Pile, Spence & Co., Dr.," reads thus: "Marks, P. S. & Co., 1 to 11, cotton press, £250." There is also a letter from J. Bowes to Pile, Spence & Co., dated Manchester, December 26, 1862, saying: "I herewith enclose a tracing of the cotton press, erected. This shows it erected for cotton goods, but the only difference, when put up for pressing cotton, is, that the table is put level with the ground, so that the boxes can run on the table. This tracing may be useful to the parties putting it up. You see, from the enclosed letter, how necessary it was to have some cash ready. I have had some trouble in having to get the work done at different places, but got all made right and sent off on the 24th inst., and hope

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it is safe at the ship by this time." The tracing accompanying that letter has three figures upon it, drawn by hand on rice paper, one a side elevation, one an end elevation, and one a view of the pumps. It is headed "8-inch hydraulic press and pumps, rise of ram 4 feet, scale  $\frac{1}{2}$  inch to a foot." Upon the tracing this is written at the bottom: "For pressing cotton the rollers at side are not required, and the table is fixed level with the floor. This tracing is only for a ram, with short lift, for Manchester goods." There is also some writing on the tracing, carefully erased with ink. A lithographed circular was also found on board, the heading of which is, "Bellhouse's wool or cotton press, by hydraulic power," and which contains a cut of the press, and the following lithographed text: "The inside dimensions of the box are 4 0 x 2.6 x 7.0. The rise of ram is 5 feet 6 inches. The box is stationary, and the upper portion is hinged, so that, when the wool or cotton is pressed, the doors can be opened, and the bale canvassed and corded." The following is written in ink upon the circular: "All the parts marked thus, X, become separated for packing, and require about 84 $\frac{1}{2}$  cubic feet of space;" and there are ten parts marked X on the cut. There was also found on board a press copy, on tissue paper, of a letter, dated January 31, 1863, signed "J. Spence," and addressed, "Capt. Jarman, S. S. Peterhoff," which says: "This will probably be handed to you by Mr. Bennett. I have arranged with him that the cotton press and gunny cloth are to be considered on joint account of the ship and the charterers. I have handed him the bills of lading. You will have to receive the freight on them for the ship's ac., viz., £71 18s. 10d. for the cotton press; £47 4s 6d. for the gunny cloth. Both these amounts are indorsed on the bills of lading which Mr. Bennett has with him. Should you call at St. Thomas you will find a press copy of this letter. The news from America has rather a peaceful prospect." There was also found on board a press copy of a letter, dated Manchester, January 20, 1863, signed "J. Bowes," and addressed to J. Spence, esq., which says: "The putting together of the cotton press is a very simple matter, and will not, I think, require any particular instructions, especially if Capt. Jarman has a drawing of the press, which shows it erected complete, and which I sent to Mr. Pile some time ago. To save time, I will write Mr. Pile this post, and request him to send you the drawing."

In this connection, some correspondence found on board is of importance. There is a letter from James I. Bennett & Wake to Pile, Spence & Co., dated London, October 27, 1862, as follows: "Referring to our negotiation relative to the matter of the laying on of a

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first-class screw boat, of about 700 to 800 tons gross register, to proceed to the Rio Grande, it is understood and agreed between us, that half the difference between the freight earned out and home, after deduction of the hire, at the rate of 30*s.* per ton per month, together with the cost of coals, pilotage, port charges, extra labor, and all the expenses usually borne by charterers of a government time-charter, be credited to and paid to us, as agents, by way of commission; that half the freight for the cotton brought home in the cabins, houses, and bunkers, (if any free,) and space on deck, is to be credited to and paid us, and that, as such agents, and by way of further comm'n, we are to have an additional comm'n of five per cent. on gross amount of freight, as a consideration for our services in procuring this freight or employment. We shall esteem it a favor you confirming the within." To this letter Pile, Spence & Co. replied, on the same day, by a letter to James I. Bennett & Wake, as follows: "We have your favor of this date, respecting the freight out and home of a first-class steamer for Rio Grande, which we beg to accept, confirm, and agree to." Then there is a further letter from James I. Bennett & Wake to Pile, Spence & Co., dated London, January 17, 1863, as follows: "The following are the conditions we understand to be agreed between us as to the cargo home for the S. S. Peterhoff. If a cargo is found at Matamoras producing £4,000 freight, the capt. is to accept same, and return as quickly as possible. In the event of the captain having £2,500 offered, and accepting better and other employment, then we are to be credited £250 for £2,500, and, in proportion, up to £4,000. If the Peterhoff does take a cargo from Matamoras, the results are to be matter of ac. between us, as originally arranged by letter, dated 27th October."

It is quite apparent, from this correspondence, which clearly relates to the Peterhoff and the voyage on which she was captured, that it was intended by Pile, Spence & Co., and James I. Bennett & Wake, that she should bring home a cargo of cotton from the Rio Grande. She carried out, as part of her cargo, a cotton press, the property of Pile, Spence & Co., or of Joseph Spence, her owner. The destination of the cotton press, which the documents referred to show to have been intended for the pressing of cotton, was undoubtedly the State of Texas, within the country of the enemy. It is well known that cotton is raised in Texas very largely, and that it is not raised in Mexico. It was in Texas that the cotton press would be useful, and would find a market, and unquestionably its

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destination was to Texas, the country of the enemy. The same documents show that the avowed intention was, that the Peterhoff should bring back a cargo of cotton, which could come only from Texas, and the cotton press was needed there to compress the cotton, so that when stowed on board of the vessel it would occupy as little space as possible. It is also shown by the invoices that, among the articles covered by one of the bills of lading indorsed to Bowden, were 200 pairs of what are called, in the invoice which covers them, "negro brogans." The destination of these is indicated by the fact that negro slavery and a negro population exists in Texas, and does not exist in Mexico. Their destination was undoubtedly to Texas. The unmistakable destination of the cotton press and the negro brogans to the country of the enemy must, on all the evidence in the case, be regarded as affixing the same destination to the rest of the cargo, as well to that not contraband as to the contraband. As to the latter, there was no army or navy in Mexico, at or near Matamoras, to be supplied by the military equipments, the military clothing, the manufactured articles fitted, in their natural state, for military use, and the cordage. Nor could there have been any demand in Mexico for the large quantities of the other articles found on board of the vessel. The evidence is entirely satisfactory that the whole of the cargo had the same destination to the country of the enemy which the cotton press and the negro brogans must have had.

I have alluded to the fact that the mail bag found on board of the Peterhoff was, on the application of the district attorney, ordered by the court to be given up to the British authorities, it having been a public mail put up in London by the post office authorities there, and directed to the postmaster at Matamoras. The contents of this mail were not inspected before its delivery. The State Department, charged with the foreign relations of the government, deemed it most proper to direct the district attorney to make application to the court for the surrender of the mail bag, unopened, to the British authorities. The court, regarding the district attorney as entitled to control the proceedings in the suit, and as entitled to dispense, on his part, with the contents of the mail bag as evidence in the case, if he desired to do so, granted the application. It was urged, on the bearing, by the special counsel for the captors, that the natural presumption must be, that there were in that mail bag letters relating to the cargo of the Peterhoff, as no letters to any consignee were found on board, nor were any letters found in the possession of any of the passengers

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respecting the disposition of the cargo; that, if the cargo was in truth intended for delivery in Mexico, the letters relating to it would have shown that fact, and would have been evidence to show the lawfulness of the voyage and the unlawfulness of the capture; that if, on the other hand, those letters contained evidence that the cargo was intended for delivery in the enemy's country, for the use of the enemy, an examination of them would have disclosed such evidence; that the effect of the surrender of the mail bag and its contents, under these circumstances, was merely to preclude the libellants and the captors from any reliance on such proof as might have been drawn from the contents of the letters in it; that the claimants in this case had a right to insist, in vindication of the lawfulness of the voyage of the *Peterhoff*, and of the lawfulness of the commerce in which she was engaged at the time of her capture, and with a view of showing the neutral destination of the cargo, if it, in fact, had such neutral destination, that the mail bag should be opened and its contents examined; that if it contained no letters on the subject of the voyage or of the cargo, no harm would have ensued to any one; that if it contained letters showing the lawfulness of the voyage, and the neutrality of the destination of the cargo, this would have been evidence in favor of the claimants; that the claimants asserted no such right, but quietly acquiesced in the surrender of the mail bag and its contents, and made no opposition thereto, although represented in court by their counsel when the application was heard by the court; and that this conduct on the part of the claimants, under all the circumstances surrounding this case, affords the strongest possible evidence of their knowledge that the surrendered mail bag contained proofs which would inculpate the vessel and her cargo, and their owners. But I cannot regard this position as a sound one. It cannot be presumed that the mail bag contained any letters relating to the cargo. There is no evidence that it did, or that any of the claimants knew that it did. And, moreover, after the surrender of the mail bag, unopened, on the application of the prosecuting officer of the government, I do not think that any speculation as to its contents can properly be indulged in, conducing to support the prosecution.

I am led to the conclusion, upon all the evidence, that the *Peterhoff*, when captured, although ostensibly upon a voyage from London to neutral waters at the mouth of the Rio Grande, was laden with a cargo composed largely of articles contraband of war, which were not designed, on their departure from England, to be sold or disposed of in

the neutral market of Matamoras, but were designed to be delivered, either directly, or indirectly by trans-shipment, in the country of the enemy, and for the use of the enemy.

The character and quantity of the articles composing the cargo were such as to show that the cargo had very little adaptation to the Mexican market, or to the small port of Matamoras, so far as any legitimate use, or sale, or consumption of it in Mexico was concerned. It was admirably adapted, in every particular, to the market of the enemy; and large quantities of the articles composing it were those for which there was a very urgent demand to supply the pressing wants of the enemy. The gain which was looked for by the shippers of the cargo only could have resulted from the sale of it to the enemy, and in the enemy's country, and could not have resulted from any sale of it in Mexico for consumption there.

The conduct of Captain Jarman, when visited by the officers from the Vanderbilt, as shown by the entries in the log-book of the Peterhoff, was inconsistent with an innocent destination of the vessel and cargo. He twice refused to comply with the demand of the commander of the Vanderbilt to go, with his papers, on board of that vessel. That is the ordinary method of exercising the belligerent right of visitation and search. In *The Maria*, (1 Ch. Rob., 340, 360,) Sir William Scott says: "The right of visiting and searching merchant ships upon the high seas, whatever be the ships, whatever be the cargoes, whatever be the destinations, is an incontestable right of the lawfully commissioned cruisers of a belligerent nation." In that case, the commander of a British cruiser fell in with several Swedish merchantmen, under convoy of a Swedish frigate, and sent an officer on board of the frigate to inquire about the cargoes and destination of the merchantmen, and was answered, that they were Swedes, bound to different ports in the Mediterranean, laden with hemp, iron, pitch, and tar. In reference to this state of things, Sir William Scott says, (p. 371:) "The question, then, comes, what rights accrued upon the receipt of this answer? I say, first, that a right accrued of sending on board each particular ship for their several papers; for, each particular ship, without doubt, had its own papers; the frigate could not have them; and the captors had a right to send on board them to demand those papers, as well under the treaty as under the general law. A second right that accrued upon the receiving of this answer was, a right of detaining such vessels as were carrying cargoes so composed, either wholly or in part, to any ports of the enemies of this country;

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for, that tar, pitch, and hemp, going to the enemy's use, are liable to be seized as contraband in their own nature, cannot, I conceive, be doubted, under the modern law of nations." "Thirdly," (p. 373,) "another right accrued, that of bringing in, for a more deliberate inquiry than could possibly be conducted at sea upon such a number of vessels, even those which professed to carry cargoes with a neutral destination." In referring to the judgment of Sir William Scott in the case of *The Maria*, *Historicus*, a recent English writer of public reputation, in *A Letter on the Right of Search*, being one of a series of Letters by *Historicus* on some Questions of International Law, (London, 1863, p. 178,) says: "The rights of the belligerent against the neutral are laid down by Lord Stowell with great precision, under three distinct heads: 1. The right to send on board for the ship's papers. 2. The right to detain such vessels as are carrying cargoes of a contraband character, either wholly or in part, to an enemy's port. 3. The right to bring in, for a more deliberate inquiry than could possibly be conducted at sea, even those which profess to carry cargoes to a neutral destination." The refusal, by the master of a neutral merchant vessel, to permit the papers of his vessel to be taken on board of a belligerent cruiser, when demanded, to be there examined by the commander of the cruiser, especially after those papers have been already so far examined on board of the merchant vessel, by a subordinate officer from the cruiser, as to excite suspicion concerning their regularity, is, on the part of the neutral master, a resistance to the right of visitation and search, even though he offers his papers for examination on board of his own vessel, and his vessel for search. After the refusal by the master of the *Peterhoff* to permit his papers to be taken on board of the *Vanderbilt* for examination there, the commander of the *Vanderbilt* would not have been justified if he had not sent in the *Peterhoff* for adjudication. The log-book states, under date of February 25, 1862, that an officer from the *Vanderbilt* came on board of the *Peterhoff*, overhauled her papers, and then returned on board of the *Vanderbilt*, demanding that the *Peterhoff* should remain stationary; that the officer then came again on board of the *Peterhoff*, and demanded that Captain Jarman should take his papers on board of the *Vanderbilt*; that Captain Jarman refused to do so, "being in charge of her Majesty's mails;" that the officer then left, threatening to send an armed crew on board; that a prize crew then came from the *Vanderbilt* and took charge of the *Peterhoff*; that, a short time afterwards, another officer came from the *Vanderbilt*, and demanded that the *Pe-*



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terhoff's papers should be taken on board of the Vanderbilt; that this was refused, at the same time full liberty being given by Captain Jarman for the papers to be overhauled on board, or the ship searched;" and that then the prize crew took charge of the Peterhoff, and told Captain Jarman that he was not to consider himself any longer in charge.

The evidence is entirely satisfactory that papers on board the Peterhoff were destroyed at the time of her capture, some by being burned and some by being thrown overboard. Those that were thrown overboard were so disposed of by the direct orders of Captain Jarman at the time, and all the circumstances of the case are such as to warrant the conclusion that the papers so thrown overboard must have contained matter in relation to the Peterhoff and her cargo which it was important should be concealed from the knowledge of the officers of the United States cruiser. To the destruction of those papers Captain Jarman added, in the first place, the false assertion, in his first answer to the 20th interrogatory, that no papers were destroyed or disposed of at the time of the capture, except some letters from his wife and father, which he tore up. Then, after he had heard, as he himself says, in his answer to the first special interrogatory on his re-examination, that it had been testified that some papers had been thrown overboard, he came forward with the story that the package thrown overboard contained white powder. It is sufficient to say that this story cannot be believed. Captain Jarman does not pretend that any one but Mohl knew anything about the contents of the package, and the story as to the white powder is not supported by a particle of testimony from any of the other witnesses. Almond speaks of the package, and says that Mohl gave it up to be destroyed at Captain Jarman's request, and that Captain Jarman ordered it to be destroyed, because Mohl objected to its being opened, and that he himself never knew what it contained. Although Almond was made aware of all these facts at the time, yet he does not pretend to have heard from Mohl, or from Captain Jarman, the story that the package contained a patented white powder.

The entire conduct of Captain Jarman in throwing overboard this package, and in denying the destruction of any papers, and in then inventing this absurd tale, is open to the most severe criticism. The rule of law on this subject is well settled. The spoliation of papers on board of a neutral vessel, when overhauled by a belligerent cruiser, is, of itself, a strong circumstance of suspicion. (1 Kent's Commentaries,

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157.) "It is certain," says Sir William Scott, in *The Hunter*, (1 Dodson, 480, 486,) "that, by the law of every maritime court of Europe, spoliation of papers not only excludes further proof, but does, *per se*, infer condemnation, founding a presumption, *juris et de jure*, that it was done for the purpose of fraudulently suppressing evidence, which, if produced, would lead to the same result; and this surely not without reason, although the lenity of our code has not adopted the rule in its full rigor, but has modified it to this extent, that, if all other circumstances are clear, this circumstance alone shall not be damnatory, particularly if the act was done by a person who has interests of his own that might be benefited by the commission of this injurious act. But, though it does not found an absolute presumption, *juris et de jure*, it only stops short of that, for it certainly generates a most unfavorable presumption. A case that escapes with such a brand upon it, is only saved so as by fire. There must be that overwhelming proof, arising from the concurrence of every other circumstance in its favor, that forces conviction of its truth, in spite of the powerful impression which such an act makes to its entire reprobation." But although, both in England and in the United States, spoliation of papers is not held to furnish of itself sufficient ground for condemnation, but to be a circumstance open to explanation, (*The Hunter*, 1 Dodson, 480; *The Pizarro*, 2 Wheaton, 227,) yet, if the explanation be not prompt or frank, or be weak and futile, if the case labors under heavy suspicions, or if there be a vehement presumption of bad faith, or gross prevarication, it is ground for the denial of further proof, and condemnation ensues from defects in the evidence, which the party is not permitted to supply. (1 Kent's Commentaries, 158; *The Pizarro*, 2 Wheaton, 227; *Bernardi v. Motteaux*, Doug., 554, 559, 560.) In *Moseley on Contraband of War*, (page 99,) it is laid down, that however regular the papers of a vessel, and however well documented the ownership of the property, if, from the examination of the master, his prevarication and suppression of evidence, and manifest falsehood as to some points, and if, from the known character of the owners and agents of the vessel, as connected with contraband trade, there be fair reason to doubt them, they will be disregarded. In the case of *The Two Brothers*, (1 Ch. Rob., 131,) the master had burned some letters before capture, which he said were only private letters. Sir William Scott, in commenting upon that circumstance, (p. 133,) says: "No rule can be better known than that neutral masters are not at liberty to destroy

papers; or, if they do, that they will not be permitted to explain away such a suppression, by saying, 'they were only private letters.' In all cases it must be considered as proof of *mala fides*; and, where that appears, it is an universal rule to presume the worst against those who are convicted of it. It will always be supposed that such letters relate to the ship or cargo, and that it was of material consequence to some interests that they should be destroyed." Sir William Scott also commented, in that case, upon the circumstance that the fact of the destruction of the letters did not come out on the master's deposition with frankness, but was added afterwards, when the circumstance had been disclosed by another witness; and he based his decision in the case very much upon his conclusion, that the master was in a great measure discredited, from the whole complexion of the case. In the case of *The Rosalie and Betty*, (2 Ch. Rob., 343, 353,) Sir William Scott says: "What has been the conduct of the master? It is said, and truly said, that in various parts of his evidence he is a gross falsifier, so as effectually to discredit his own testimony. But, will this stop here? I apprehend not. It goes much farther, and extends to the character of his employer; for, where a master prevaricates so grossly as this man does, I cannot suppose that he would be a voluntary falsifier, or that, without an interest, or without instruction or subornation, he would lead himself into such a labyrinth of fraud. I cannot help thinking that the conduct of this master has been such as will reasonably affect the credit and the property of his employers." In the case of *The Rising Sun*, (2 Ch. Rob., 104, 106,) Sir William Scott says: "Spoliation is not alone, in our courts of admiralty, a cause of condemnation; but, if other circumstances occur to raise suspicion, it is not too much to say of a spoliation of papers, that the person guilty of that act shall not have the aid of the court, or be permitted to give further proof, if further proof is necessary."

The proof being satisfactory that papers on board of the *Peterhoff* were destroyed by the orders of Captain Jarman, and such destruction not having been satisfactorily explained, but having been attempted to be explained by a resort to an absurd and manifestly fabricated story, the inference which the court must draw from the destruction of the papers is, that, if produced, they would have furnished proof of the unlawful character of the voyage of the *Peterhoff*, and that she was carrying contraband articles, destined to be delivered in the enemy's country, by trans-shipment from her at the mouth of the Rio Grande.

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There are many other concurring circumstances, which are inconsistent with an honest neutral commerce, and only consistent with a design to introduce contraband articles into the country of the enemy. The manifest of the cargo does not disclose the articles on board, but only mentions the cargo as consisting of boxes, bales, cases, kegs, coils, packages, casks, bundles, chests, and trunks, except in a few unimportant instances; and, in one instance, in the manifest, the word "rope," which had been written after the word "coils," has been carefully erased. If the cargo was in good faith designed for sale in the neutral market of Matamoras, a disclosure, in the manifest, of the contraband articles on board would have done no harm, because the commerce would have been lawful, and the merchandise not contraband, even though the entire cargo had consisted of munitions of war. The suppression in the manifest, which is a most important paper to be carried by a vessel in time of war, in reference to her cargo, especially when she is near the country of a belligerent, of all facts tending to show what articles were on board designed and adapted for army and navy purposes, cannot be looked upon in any other light than as a confession that those articles were destined to be delivered in the enemy's country, and for the enemy's use, and were, therefore, contraband. It is true that invoices of nearly all of the cargo were on board, but those invoices were almost all of them in the possession, not of the master, but of the passengers, and formed no part of the ship's papers. The proper paper of a vessel, to show the particulars of her cargo, is her manifest; and, when the boarding officer of a cruiser demands of the master of a merchant vessel the papers of his vessel, he obtains, as the paper showing the particulars of the cargo, the manifest, and not the invoices. In some of the treaties of the United States with foreign countries, it has been provided that, when the two nations are at war, the vessels of both of them, being laden, must be provided, among other papers, "with certificates containing the several particulars of the cargo, that so it may be known whether any forbidden or contraband articles be on board of the same." (The *Amiable Isabella*, 6 Wheaton, 1; Treaty of 1795 with Spain, Art. 17, 8 U. S. Stat. at Large, 148; Convention of 1800 with France, Art. 17, *Id.*, 186.) This rule exists and is to be administered, whether embodied in treaty stipulations or not, and the foundation of it is, that, in time of war, the documents properly constituting the documents of a merchant vessel should show the particulars of her cargo, especially where, as in the present case, she was documented

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for neutral waters just outside the limits of the country of one of the belligerents, those neutral waters being extensively used as a mere convenience for the trans-shipment of cargoes bound to that country. Moreover, there were no invoices whatever found on board for the sets of artillery harness, and the halters and halter-chains accompanying the same, or for a large quantity of the harness rings and buckles, or for any of the quinine, chloroform, calomel, and other drugs addressed to Burchard & Co., Matamoras.

So, too, the bills of lading found on board are of such a character as to indicate that the cargo was not intended, in good faith, to be delivered at Matamoras, for sale or use there, but was to be delivered in the enemy's country. No one of the thirty-nine bills of lading covering the cargo contains the name of any consignee, with the exception of the one for the fifty-two packages addressed to Burchard & Co., Matamoras. All the other bills, which embrace all the rest of the cargo, declare the merchandise to be deliverable to the order of the shippers. Of the thirty-nine bills, twenty-one are indorsed to four persons who were on board of the vessel at the time of her capture, (three of them being passengers, and one being her master,) nine are indorsed in blank, (of which nine, two are for shipments made by Redgate, and two for shipments made by Spence, the owner of the vessel,) and nine are not indorsed, (of which nine, one is for goods of which Captain Jarman was the shipper.) All the bills of lading, as well those indorsed specially to the passengers and master, as those indorsed in blank, and those not indorsed, and originals as well as duplicates, were found in the possession of the passengers or the master. Captain Jarman says that all the cargo, except what was consigned to Burchard & Co., was represented by himself and the three passengers, Redgate, Almond, and Bowden; and Redgate says that the cargo would have been at the disposal of the persons holding the bills of lading. These bills of lading entirely fail to disclose the truth as to the contraband articles on board of the vessel. In the bill of lading for the cotton press, it is called a hydraulic press, and the only other articles mentioned in the bills of lading in such a manner as to enable any one, on an inspection of them, to tell what articles were to be found among the cargo, are the following: bagging, rope, wrought steel, seeds, nails, iron hoops, tin, gunny-cloth, cotton wrapping, boots, iron drums, blankets, smiths' bellows, spades, shovels, anvils, and medicines.

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Under all the circumstances surrounding this case, and in view of all the departures from the ordinary course of commercial transactions, it is not credible that there was a design, in good faith, to sell and dispose of the cargo in the market of Matamoras. Of this nature is the inference to be derived from the character and quantity of the contraband portion of the cargo, if it had a hostile destination. The gray blankets, the Bluchers and Blucher boots, the cavalry and artillery boots, the artillery harness, and the coils of rope, were especially adapted to the use of the enemy, as were also the cotton press, the smiths' bellows and anvils, the quinine, chloroform, opium, morphine, and other drugs, and the horseshoes, which the commissioners report to be horseshoes of a large size, it being understood that mules and small horses are used in Mexico, as a general thing, while cavalry horses are used by the enemy.

Another fact, of marked significance, is, that among the passengers on board of the vessel were two residents of Texas, who, for the purposes of this case, must, under the adjudications of the Supreme Court, in *Jecker v. Montgomery*, (18 Howard, 110,) and in *The Prize Cases*, (2 Black, 635,) be considered as public enemies. One of them, Redgate, was, at the commencement of the war, a citizen of Texas, and admits, now, that he is a citizen of the United States. This admission he took great pains to make on the record of his testimony, having caused it to be corrected, by erasure and interlineation, from his testimony as first given, which was, that he was once a citizen of the United States, and now owed allegiance to Mexico, and thought he did not owe allegiance at present to the United States. He is the claimant, as owner, either alone or jointly with others, or as agent or consignee, of a considerable portion of the cargo, which portion must be condemned as being enemy's property, irrespective of all other considerations. The other passenger, Mohl, told the witness Tregidgo that he was a resident of Texas. He, with three other passengers—Edwards, Heyck, and Ellsworth—left the Peterhoff at Key West, because, as Captain Jarman testifies, they had no interest in the cargo. Mohl's persistence in refusing to permit the contents of the package in question to be examined by any person, for the reason assigned by him, as stated by Captain Jarman, that the contents were a white powder, which was patented, and could not be seen by any one but himself and friends, taken in connection with the circumstances under which the package was thrown overboard, and with the particular time selected for throwing it overboard, and with the

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fact that it had been previously arranged to throw the same package overboard, in case of the search of the Peterhoff by officers from the Alabama, besides leading to the conclusion that documents were contained in the package of a character so dangerous that they were thrown overboard when it was manifest that the officers from the Vanderbilt were about to search the Peterhoff, and, at the same time, so important to be preserved that they were not sacrificed by Mohl save at the last extremity, and with the greatest reluctance, producing in Mohl, as testified to by Tregidgo, an appearance of great depression at the necessity of destroying the package, might perhaps warrant the presumption that Mohl was an agent of the enemy.

The witness Tregidgo, who was formerly a midshipman in the British navy, and who stands entirely uncontradicted and unimpeached, testifies that he heard Mr. Heyck, one of the passengers, say that the cargo was to go across the river from Matamoras into Texas. Although this is hearsay evidence, yet, in a prize case, such evidence is sometimes the most reliable to prove the destination of the vessel and cargo. Tregidgo says that Heyck told him that he belonged to Texas. Heyck left the vessel at Key West, with Mohl and two other passengers. If it was intended that the cargo should be carried across the river from Matamoras into Texas, it was to be delivered directly into the enemy's country, and for the enemy's use, and its transit through Matamoras, for that purpose, would not be for any purpose of lawful commerce at Matamoras, nor would it impress upon the cargo a neutral destination.

Upon all the proofs in the case, therefore, notwithstanding the ostensible destination of the Peterhoff to neutral waters at the mouth of the Rio Grande, the actual hostile destination of the cargo must be considered as established. In arriving at this conclusion, I have, as heretofore stated, not given any weight to the circular letter of James I. Bennett & Wake, of November 24, 1862, produced upon the hearing, nor do I regard it as necessary, in consequence of any doubt I have as to the proper disposition to be made of this case, to open the case for further proof, in order to allow the introduction of that letter in evidence. It is apparent, from a mere reading of the letter, that every circumstance proved in evidence, in respect to the Peterhoff and her cargo, is entirely consistent with the course of trade, marked out so specifically in the letter, in respect to carrying goods into the country of the enemy and bringing back cotton in return, and is entirely inconsistent with any honest destination of the cargo to a Mexican market.

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for use or sale there. In addition, we have the fact, brought to light in the correspondence of October 27, 1862, between Pile, Spence & Co. and their brokers, that the Peterhoff was to bring home a cargo of cotton from the Rio Grande; the recommendation, in the circular letter, of Redgate, as being "an expert in cotton," "resident nearly forty years in Texas and Mexico," and a gentleman whose services would be "of great value to shippers, in respect to his local knowledge and influence, as also as regards agency of the inland transit, and landing and shipping of goods and cotton;" the fact, stated in the circular letter, that it was written for the guidance of those who might be "desirous of shipping to America," not to Mexico; the facts, stated in that letter, that "a Mr. Besbie, of the Confederate States of America, holds a contract from that government, whereby he is to receive 100 per cent. on invoice cost, payable in cotton, at specie value, clear of all charges of freight, &c., for any goods he may deliver into the Confederate States," that such contract "has been authenticated by Mr. Mason and others," and that Besbie is willing to share the same, "say to the extent of 50 per cent., with any houses who may feel inclined to ship;" the facts, that Besbie, as testified to by several witnesses, came on board of the Peterhoff at Plymouth, and left her again at Falmouth, that he was an American, and an officer in the "confederate" army, and had his sword with him, and that, when he left the vessel, he announced his intention of going out to Mexico by another conveyance; the fact, that the circular letter announces that shippers may send out their own supercargoes, that they need not avail themselves of Besbie's contract, but that, if they do not, they will not be sure of getting cotton, "as the wagon traffic cannot be properly carried on without the aid of government support in the shape of teamsters to attend to cattle, and which the confederate government will supply from the army, to facilitate the inland transport of goods, and the bringing back of cotton for the contract," and that, "in the event of peace, the confederate government, by the contract, binds itself to receive goods that are shipped but not delivered, and, for any orders not shipped, but in course of same, 10 per cent. profit upon invoice cost and charges." The contents of the circular letter, when viewed in the light of the evidence in the case, would, therefore, entirely warrant the court in holding that that letter, if necessary to be proved, and if proved in a proper manner, would be very material evidence to show the real character of the voyage of the Peterhoff, and the true destination of her cargo.



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Contraband articles, destined for the use of the enemy, were found on board of the *Peterhoff*, covered by bills of lading indorsed to each of the claimants on the record, namely, Captain Jarman, Redgate and Almond, and Bowden, who is represented by Redgate. Contraband articles were also found, destined for the use of the enemy, shipped by Spence, the owner of the vessel. Therefore, all the claimants of the vessel and cargo had on board contraband articles, which were destined to be delivered, directly, or indirectly by trans-shipment, into the enemy's country, and for the use of the enemy, and not for sale or disposition in the neutral market of Mexico. The evidence is clear, that all the cargo on board was really represented by, and under the control of, Captain Jarman, Redgate, Almond, and Bowden. Consequently, not only were the contraband articles subject to lawful capture by a vessel of the United States, but the other articles on board, belonging to or represented by Captain Jarman, Redgate, Almond, Bowden, and Spence, embracing the entire cargo of the vessel, were subject to like lawful capture, notwithstanding the vessel was, at the time of her capture, on an ostensible voyage from England to neutral waters at the mouth of the Rio Grande.

The settled rule of law is that, where contraband articles, destined for the use of the enemy, are found on board of a vessel, all other goods on board of that vessel belonging to the owner of the contraband articles, even those goods which are innocent, must share the fate of the contraband goods. (Halleck on International Law, ch. 24, § 6, p. 573; 3 Phillimore on International Law, § 277; 2 Wildman's International Law, 217; *The Sarah Christina*, 1 Ch. Rob., 237.)

I have already, in this opinion, referred to the authorities which establish the principles of prize law which lead to the condemnation of this cargo. I discussed those principles very fully in the cases of *The Stephen Hart* and *The Springbok*, but there are some features in the present case which demand special remark. *The Stephen Hart* was bound, on her papers, to Cardenas, in Cuba, and the *Springbok* to Nassau, N. P. Those ports, though sufficiently near the country of the enemy to induce their use for the trade in which those vessels were engaged, were yet sufficiently distant to expose their cargoes to great hazard of capture in their transit, after trans-shipment from those ports, to the enemy's ports. But the transit of the cargo of the *Peterhoff* from the neutral waters at the mouth of the Rio Grande into the enemy's country would have been attended with no danger whatever, those neutral waters being on the very border of the enemy's country.

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Every bill of lading of the cargo of the Peterhoff (and the thirty-nine bills of lading found on board covered the entire cargo) contains a provision that the goods are to be taken from alongside of the ship at the mouth of the Rio Grande, within thirty days, in lighters, provided such lighters can cross the bar; and the stipulation on the part of the vessel, in every bill of lading, is, to deliver the goods on the Rio Grande, in the Gulf of Mexico. After the lighters had crossed the bar, and ascended the Rio Grande, which is the dividing line between the country of the enemy and Mexico, their freight might as well and as securely be delivered in the enemy's country, on the left bank, as in the Mexican territory, on the right bank; and any transit of the goods through Matamoras, on their way to Texas, could not deprive the goods of the destination to the enemy's country, originally intended for and impressed upon them. If a pretended neutral commerce of this character, enjoying such facilities for the introduction of contraband goods into the enemy's country, can be carried on without interference, and if the ostensible destination of a vessel, on her papers, to neutral waters at the mouth of the Rio Grande, be sufficient, even when attended by all the circumstances which appear in evidence in this case, in respect to the vessel and her cargo, to exempt both from seizure and condemnation, a very wide door will have been opened for the practice of fraud upon the belligerent rights of the United States; and the commerce of neutrals with the enemy, in supplying them with contraband articles, can go on in safety to an unlimited extent. The naked doctrine upon which this immunity is sought to be upheld is, that whatever the character of the cargo, and whatever its ulterior destination, it is protected from lawful capture, so long as the vessel on board of which it is laden is pursuing a voyage between neutral ports. The unsoundness of this doctrine has been fully demonstrated.

There is another principle of law, which has been applied by the court of admiralty in England to cases like the present one, and which has been pressed upon the court in this case by the special counsel for the captors. He maintains that, where the neutral port or neutral territory lies in such immediate proximity to a port or territory of the enemy as to render it impossible to prevent contraband articles from going immediately from one port or territory to the other, it is as much a violation of neutral obligations, to be followed by confiscation of the property when seized, to introduce contraband articles into the port or territory of the neutral in time of

war, as it is to carry them directly to the enemy's port or territory; that such was the position of the neutral waters at the mouth of the Rio Grande, and of the neutral port of Matamoras, in respect to the State of Texas and the port of Brownsville; that lighters, laden with contraband articles, leaving a vessel at the mouth of the Rio Grande, and ascending that river to deliver their freight at Matamoras, might as well deliver it at Brownsville, directly opposite, so far as regards the possibility of preventing such contraband articles from reaching the enemy; and that it is not a sound proposition, that the proximity of a neutral port to the country of the enemy cannot in any manner affect or impair neutral rights, in respect to commerce with such neutral port. We have, indeed, the high authority of Sir William Scott for saying that the enforcement of belligerent rights demands and justifies a restriction upon the commerce of neutrals with a neutral port thus situated; and he enforced such restriction. In *The Zelden Rust*, (6 Ch. Rob., 93,) a quantity of Dutch cheese, a contraband article, was on board of a vessel destined to Corunna, in Spain. It was contended by the King's advocate that a destination to Corunna, a lawful port, was, in fact, a destination to Ferrol, an unlawful port, since those ports were both in the same bay, and so situated as to render it impossible to prevent supplies from going immediately to Ferrol, for the use of the Spanish navy, if they were permitted to enter the bay unmolested, under an asserted destination to Corunna. Sir William Scott, after holding cheese to be a contraband article, says: "Corunna is, I believe, itself a place of naval equipment in some degree; and if not so exclusively, and in its prominent character, yet, from its vicinity to Ferrol, it is almost identified with that port. These ports are situated in the same bay, and, if the supply is permitted to be imported into the bay, it would, I conceive, be impossible to prevent it from going on immediately, and in the same conveyance, to Ferrol. There is, in this respect, a material difference between the present case and the case which happened yesterday," (*The Frau Margaretha*, 6 Ch. Rob., 92,) "of similar articles going to Quimper. That port, though in the vicinity of Brest, is situated on the opposite side of a projecting headland or promontory, so as not to admit of an immediate communication, except by land carriage. Without meaning to interfere with the principles of that decision, I think myself warranted to consider this cargo, on the present destination, as contraband, and, as such, subject to condemnation." On the principle of this decision, the cargo of the *Peterhoff* was lawfully captured, and

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liable to condemnation, even though it was honestly destined to the port of Matamoras, to be there used or sold.

The principle thus maintained in the case of *The Zelden Rust*, is recognized in the decision of the same judge in the case of *The Maria*, (6 Ch. Rob., 201.) In that case, the French, then enemies of Great Britain, were in possession of one bank of the river Weser, the neutral port of Bremen being on the other bank; and a blockade of the river had been instituted by Great Britain. The cargo of the vessel was sent from Bremen, in lighters, to the Jade, to be shipped to America, while the vessel herself went in ballast from the Weser to the Jade, and there took on board her cargo. In delivering his opinion, in that case, Sir William Scott says, (p. 203:) "A blockade imposed on the Weser must, in its nature, be held to affect the commerce of Bremen; because, if the commerce of all the towns situated on that river is allowed, it would be only to say, in more indirect language, that the blockade itself did not exist. It cannot be doubted, then, on general principles, that these goods would be subject to condemnation, as having been conveyed through the Weser; and whether that was effected in large vessels or in small, would be perfectly insignificant. That they were brought through the mouth of the blockaded river, for the purpose of being shipped for exportation, would subject them to being considered as taken on a continued voyage, and as liable to all the same principles that are applied to a direct voyage, of which the *terminus a quo* and the *terminus ad quem* are precisely the same as those of the more circuitous destination."

Thus, the court of admiralty of Great Britain condemned contraband goods going to the neutral port of Corunna, where there was no suspicion of their being destined to the hostile port of Ferrol, upon the sole ground that it would be impossible to prevent those articles, when they reached Corunna, from going immediately to Ferrol, if they were permitted to enter, unmolested, waters that were common to both of those ports. And the same court condemned goods which were carried from the neutral port of Bremen, through the mouth of the blockaded river, on which it is situated, upon the ground that the blockade could not exist for any practical purpose, unless the commerce of Bremen, although neutral, was to be affected by it; and it held the doctrine that, if goods could not reach the sea from Bremen without going through the blockaded waters, they could not depart from Bremen at all. The necessity of the case was held, under the law of nations, to justify, in the one case, the stoppage of commerce

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*The Peterhoff.*

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in contraband articles to Corunna; and, in the other case, the stoppage of all commerce from Bremen. The justification for the rule urged in the one case was, that the articles, if permitted to go to Corunna, could not be prevented from going to Ferrol; and, in the other case, that the blockade could not exist without affecting the commerce of Bremen. These principles, if applied by this court to the case of the *Peterhoff*, as being necessary for the maintenance of the belligerent rights of the United States, with respect to the neutral waters off the mouth of the Rio Grande, and to commerce with the port of Matamoras, would justify the condemnation of the cargo, not only the contraband portion, but that which was not contraband. I am not prepared, however, to apply those principles to this case, or to express an approval or disapproval of their soundness. The necessities of the case do not, in my opinion, demand a decision upon those points.

It is apparent, from the terms of the correspondence of October 27, 1862, between James I. Bennett & Wake, and Pile, Spence & Co., that the adventure of the *Peterhoff*, in taking out a cargo to the Rio Grande, with the intention of bringing home, in return, a cargo of cotton, was an adventure in which James I. Bennett & Wake, as brokers, and Pile, Spence & Co., as representing Joseph Spence, a member of that firm, and the owner of the *Peterhoff*, were to be interested jointly. No charter of the vessel from Spence to any person has been produced, unless the correspondence referred to is to be considered as a charter. James I. Bennett & Wake were employed as brokers by Pile, Spence & Co., on behalf of Spence, to obtain the outward cargo for the vessel, and, as such brokers, their names appear on the manifest. Captain Jarman says that he was appointed to the command of the vessel by Spence, and that she was delivered to him by Spence. According to the well settled rule of law, therefore, Spence must be held responsible for all that was done by his agent, Captain Jarman, and for the employment of the vessel by Captain Jarman, knowingly, in carrying contraband articles to the country of the enemy, irrespective of the fact that Spence himself shipped on board of her, as an adventure, 90 coils of tarred hemp rope, which are found to have been contraband articles going to the country of the enemy, and also the cotton press, and the smith's bellows and anvils, and various other articles. Where the vessel belongs to the owner of the contraband articles, or where there are circumstances of fraud as to the papers or the destination of the vessel or the cargo, and thus an attempt, under colorable appearances, to defeat the rights of a belligerent, the vessel which carries the

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The Peterhoff.

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contraband articles will be condemned, and the penalty on the vessel will not be limited merely to a loss of freight and expenses. (The *Ringende Jacob*, 1 Ch. Rob., 89; The *Jonge Tobias*, Id., 329; The *Franklin*, 3 Ch. Rob., 217.) So, too, the vessel will be condemned, not only where her owner is privy to the carriage of contraband, but where the master of the vessel, as the agent of such owner, interposes so actively in the fraud as to consent to give additional color to it by sailing with false papers. (The *Franklin*, 3 Ch. Rob., 217, 221, note; The *Mercurius*, 1 Ch. Rob., 288, note; The *Edward*, 4 Ch. Rob., 68; The *Neutralitet*, 3 Ch. Rob., 295; *Carrington v. The Merchants' Insurance Co.*, 8 Peters, 495, 520, 521.) So, also, if the owner of a vessel places it under the control of a master, who permits it to carry, under false papers, contraband goods, ostensibly destined to a neutral port, but in reality going to the country of the enemy, he must sustain the consequence of such misconduct on the part of his agent. (The *Ranger*, 6 Ch. Rob., 125; *Jecker v. Montgomery*, 18 Howard, 110, 119; The *Mercurius*, 1 Ch. Rob., 80.) A neutral owner of a vessel is, as a general rule, held responsible for all the acts of the master of his vessel, committed in violation of the rights of a belligerent. (The *Vrouw Judith*, 1 Ch. Rob., 150; The *Columbia*, 1 Ch. Rob., 154; The *Hia-watha*, 2 Black, 635, 678.) I can come to no other conclusion in this case than that the acts of Captain Jarman, in signing bills of lading of the character of those in the present case, and in sailing with a manifest giving no adequate information as to the contraband goods on board, and in causing the destruction of papers, and in fabricating the absurd story about the white powder, and, in addition, in testifying that the vessel, the whole of whose cargo, except the cases directed to Burchard & Co., was, as he says, represented by Almond, Redgate, Bowden and himself, had no goods on board which he considers contraband of war, and in averring his inability to specify the contents of his cargo, when he himself was the indorsee of bills of lading covering contraband articles, must be regarded as evidence that he entered upon a systematic course of concealment of the real character of the contraband articles on board, so as to subject the vessel to condemnation as the result of such fraud, when, under other circumstances, she might go free, even though her cargo were confiscated. (Moseley on Contraband of War, 97, 98.) A master is, in time of war, bound to know the contents of his cargo, and cannot be permitted to aver his ignorance of the contents of contraband packages on board of his vessel. (The *Oster Risoer*, 4 Ch. Rob., 199.)

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*The Kate.*

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The capture of the *Peterhoff* on the high seas, at the place of her capture, was lawful. From the moment a vessel, having on board contraband articles, which have a destination to the enemy's country, leaves her port of departure, she may be legally captured; and it is not necessary to wait until the goods are actually endeavoring to enter the enemy's country, the penalty attaching the moment the illegal transportation commences. (Halleck on International Law, chap. 24, section 7, page 573; 2 Wildman's International Law, 218; 1 Duer on Insurance, 626, sec. 7; *The Imina*, 3 Ch. Rob., 167; *The Tendre Sostre*, 6 Ch. Rob., 390, note; *The Columbia*, 1 Ch. Rob., 154; *The Neptunus*, 2 Ch. Rob., 110.)

An appeal to the Supreme Court was taken in this case within ten days after the decree was made, and the vessel was taken by the Navy Department, for the use of the government, at an appraised valuation of \$80,000. No application was made to the court, on the part of the claimants, for leave to put in further proof, and most clearly this is not a case where the privilege of further proof would be tendered to the claimants.

The vessel and cargo are, both of them, condemned.\*

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THE STEAMER KATE.

Vessel condemned for an attempt to violate the blockade.

(Before BETTS, J., October 10, 1863.)

BETTS, J.: This vessel was captured at sea, August 1, 1863, off New inlet, North Carolina, and sent into this port for adjudication. A libel was filed against her, August 26. A warrant of attachment and a monition thereon were served by the marshal on the same day, and were returned in court on the 15th day of September thereafter. Proclamation being made in open court, and no one appearing or intervening for the said vessel, and satisfactory proof being made to the court that, before capture, the said vessel had been chased by the blockading squadron investing the said port, and driven on shore, on her attempting to violate the blockade of the port of Wilmington, North Carolina, on the 12th day of July last, and that she was, on being abandoned, stripped of her lading, rigging, and machinery by the enemy, and was afterwards found so afloat, and was captured by a United States vessel-of-war, and sent to this port, and that she be-

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\*An appeal was taken to the Supreme Court from this decree.

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The St. George.

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longed to England, and no contradictory or explanatory evidence being offered thereto, it is ordered that the said vessel be condemned, as prize of war, and forfeited to the United States.

Decree accordingly to be entered.

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## THE SCHOONER ST. GEORGE AND CARGO.

Vessel and cargo condemned for an attempt to violate the blockade.

(Before BETTS, J., October 14, 1863.)

BETTS, J.: The above vessel and cargo were captured at sea, April 22, 1863, off New Inlet, North Carolina, by the United States ship-of-war Mount Vernon, and were sent to this port for adjudication. A libel was filed against the prize, demanding its condemnation and forfeiture, April 29, 1863, and a monition and attachment were the same day duly served thereon, which were returned on the 19th of May thereafter. Thereupon, on due and regular proceedings before the court, the default of the prize was proclaimed and decreed, no person intervening or appearing therefor.

It appears, from the certificate of the vessel's registry, that she was a British vessel, owned at the port of Hamilton, Bermuda, November 10, 1853, by John Jay Bowne, of that place. The shipping articles show that the crew engaged, in April, 1863, for a voyage from St. George's, in the Bermudas, to Baltimore, and thence back to the West Indies, and to St. George's. The certificate of clearance from the same port cleared the vessel, with 800 bags of salt and a cargo of general merchandise, for Baltimore, April 10, 1863. The master of the vessel and the agent of the owner testified, on examination *in preparatorio*, that they knew that Wilmington was in a state of blockade; that they knew of the state of war; that the vessel was boarded by a United States war vessel, April 22, and warned off the coast; and that the warning was indorsed by the boarding officer on the vessel's papers. The first mate testifies that, after leaving Bermuda, the master suggested to him to run the blockade, and that the prize was steered for the coast of North Carolina, to do so. No evidence is given disproving these facts.

The case is one of a clear intention and attempt to violate the blockade, and a decree of condemnation and forfeiture of the vessel and cargo must be entered.



## THE SCHOONER MARIA BISHOP AND CARGO.

Vessel and cargo condemned as enemy property.

The vessel and cargo having been shipwrecked after seizure, and having been saved by salvors, the court allowed to the salvors, as salvage, one-half of the net proceeds of the salvaged property, deducting the costs incurred by the United States in the prize suit.

(Before BETTS, J., October 14, 1863.)

BETTS, J.: The above vessel and cargo were captured off Charleston harbor, May 17, 1863. After seizure the vessel and cargo were shipwrecked. The vessel became a total loss, and was abandoned at sea, and the cargo was reclaimed by salvors, and brought to this port for adjudication. A libel was filed by the libellants, against the prize, in this court, June 3d thereafter, and a writ of attachment was issued thereon on the same day, returnable on the 23d of June following. The marshal returned thereon due service of it upon the said cargo, and no person intervening therefor, except as salvors, defaults were taken, according to the course of the court, and a decree of condemnation was ordered by the court thereupon.

On the hearing of the case upon the merits, it was fully proved on the part of the United States that the vessel and cargo were enemy property, owned in Charleston, and had been brought out of that port in violation of the blockade thereof.

On the 2d of June, 1863, the Coast Wrecking Company filed a libel against the aforesaid schooner Maria Bishop and her cargo, demanding a salvage compensation for services, &c., in relieving and saving her from shipwreck and loss while under capture, as aforesaid, by the United States. On the 21st of June following, the United States interposed an answer and claim, and also their own libel, setting forth and demanding the same relief for the aforesaid services. The United States attorney having admitted in court the justness of such demand, and the counsel for the respective parties having submitted it to the judgment of the court to determine the amount of salvage rightfully payable for the salvage services aforesaid, the court, having examined the testimony submitted in the case, and considered the premises, adjudges and determines that one-half of the net proceeds of the salvaged property, deducting the costs incurred by the United States in the prize suit, be paid to the salvors, or the party representing their interests.

A decree to that effect will be entered.

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The Nellie.

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## THE SLOOP NELLIE AND CARGO.

In this case, no witnesses having been sent in with the vessel, and no reason being furnished for not producing them, and the commander of the capturing vessel being examined by order of the court, but not furnishing any proof of any violation of the blockade, or that the captured property was enemy property, the court ordered the case to stand over for further proof as to the criminality of the vessel, and in order that the absence of all evidence from on board of her might be accounted for, and allowed six months time for that purpose.

(Before BETTS, J., October 14, 1863.)

BETTS, J.: This vessel and cargo were captured at sea, about 25 miles northeast from Port Royal, South Carolina, March 29, 1863, by a United States ship-of-war. The vessel was, by due valuation and course of procedure, taken for the use of the United States at the time, and the cargo was sent to this port for adjudication. Due service and return of the warrant of attachment and of the monition were made; and, no one intervening in defence of the action, judgment of condemnation and forfeiture was regularly entered, by default, against the vessel and cargo.

In the absence of other witnesses in the case, John J. Almy was, by order of the court, examined *in preparatorio* in the cause. He testifies that he was present at the capture of the Nellie at sea; that she had no papers on board; that she was captured because she was found at sea without papers; that her master acknowledged that he had run the blockade out of Charleston with her, and was bound to Nassau; that the capture was made by a United States ship-of-war under command of the witness; that the vessel carried about 75 bales of cotton; and that her master said he came out of Charleston and was going to Nassau, and knew all about the war.

No witnesses were sent in with the captured vessel, nor is any reason furnished for not producing them. No doubt the officer making seizure of a vessel at sea is a competent witness to prove the act of capture, and also circumstances accompanying the capture, which afford reasonable cause for believing the culpability of the property arrested. No proof is furnished by Captain Almy that the vessel in fact evaded the blockade of Charleston, or that the person who made the declarations testified to had been really master of the Nellie, or that the Nellie or her lading were enemy property. The unseaworthiness of the prize vessel and her appropriation to the use of the United States are, *prima facie*, adequately authenticated if the prize is shown to have been enemy property at the time or to have violated the blockade.

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The Tampico.

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The case must stand over for further proof as to the criminality of the vessel seized, and in order that the absence of all evidence from on board of her may be accounted for; and it is ordered by the court that the United States be allowed the period of six months from the entry of this decree to produce proof to that end.

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## THE SCHOONER TAMPICO AND CARGO.

Vessel and cargo condemned for a violation of the blockade.

(Before BETTS, J., October 16, 1863.)

BETTS, J.: This vessel and cargo were captured by the United States ship-of-war Cayuga, April 3, 1863, off the coast of Texas, just after she escaped from Sabine Pass, a blockaded port. The libel was filed May 25, 1863, and the monition issued thereon was returned in court June 16th thereafter. At that time the British consul appeared in open court and interposed a claim of ownership to the vessel and cargo in behalf of British subjects. This appearance and claim was no further prosecuted in court; and the proofs in the cause having been submitted to the consideration of the court, on motion of the United States attorney for a decree of condemnation and forfeiture of the vessel and cargo as prize of war, the evidence produced by the libellants in support of the motion has been examined and considered with a view to ascertain the character and conduct of the vessel and her cargo.

It appears upon the vessel's papers that she was built in New York in 1856. No disposition of the right and title out of the then owner is proved by the papers, other than an informal statement by David J. Jolly, given at Tampico June 25, that he is a British subject, and a further declaration of the British consul at Tampico, June 26, attached to a provisional register of the vessel at that port, to the said Jolly, asserting that Jolly had purchased the vessel and that Henry Shephard was her master. No proof is exhibited, on the papers of the vessel or otherwise, of any consideration paid on the sale of the vessel, or as to who was the vender, or as to the time or place at which the sale was made, or as to the execution of a bill of sale.

Thomas Paulson, who was the master of the vessel when the seizure was made, testifies, on his examination *in preparatorio*, that the vessel was captured about 35 miles from Sabine Pass and sent into New Orleans; that she was seized for running out of Sabine Pass in evasion

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The Tampico.

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of the blockade; that the British consul at Tampico appointed the witness master of the vessel; that he took possession of her there; that the crew were all shipped there; that the vessel had a clearance from the collector of Sabine and was bound to Honduras and Matamoros; that Jolly is a British subject and lives at Tampico; that the cargo was laden on board at Sabine; that the laders resided at Sabine; that the witness knew of the blockade; that the vessel passed out of the port at 12 o'clock in the night and was seized at 5 o'clock the next morning; that he had seen the blockading squadron before running out of the port; and that he sailed out intending to elude the blockade.

The mate, Lawrence, testifies that the master of the vessel resides at Houston, Texas; that he does not know to what port or place the vessel was bound, or where the voyage was to end; that the vessel was captured about daylight in the morning; that he knew that the port was under blockade; that the vessel attempted to elude it; and that the pilot told him and the captain that the time was a good one to get out, the blockading vessels not being in sight.

Nagle, the supercargo and agent of the cargo, says that the laders of it were residents in Houston, Texas, and that he believes that the cargo is owned in Liverpool.

The evidence all tends to one conclusion: that the whole enterprise, in the procurement of the vessel, her lading, and her despatch, was undertaken with knowledge of its illegality, and with the purpose, on the part of all the parties interested in it, to violate the blockade of the port of Sabine Pass. The vessel and cargo are, for that cause, subject to forfeiture.

Besides, the alleged owner, Jolly, the claimant of the vessel, establishes by proof no legal or equitable title to the vessel. Even if he had paid a fair consideration, and obtained her conveyance to him by a regular bill of sale, he would not be allowed to purchase an enemy vessel in an enemy country, and employ her in commerce and trade in the productions and property of the enemy's country. (Upton's Maritime Warfare, 146 to 151; Wheat. on Captures, ch. 3.) The trade he was pursuing was accordingly illegitimate as to him, and his interest in the vessel is liable to confiscation.

There must, therefore, be a judgment of condemnation and forfeiture of the vessel and cargo seized.

## THE SCHOONER MARY CLINTON AND CARGO.

Objections taken, in the claims, to the sufficiency of the libel, in point of pleading, overruled. The hostilities subsisting between the government and the rebels have the character and attributes of a public war, and the rules of national law applicable to wars of that description govern the rights and liabilities of persons whose property is captured, as prize of war, during such hostilities.

A lawful blockade had been imposed by this government, and put in force, at the time of the arrest of the vessel in this suit.

The property of persons domiciled or residing within the rebel States is a proper subject of capture on the sea as enemy property.

The proclamation of blockade is, of itself, conclusive evidence that a state of war existed which demanded and authorized a recourse to a blockade, under the circumstances existing in the case.

Property devoted to illegal traffic becomes thus stamped as enemy property, and the quality of hostility does not depend exclusively upon the personal sentiments or lawful allegiance of the party, but arises often from his actual or business residence; so that the produce of the soil of the hostile country, engaged in the commerce of the hostile power, is legitimate prize without regard to the domicile of the owner.

A neutral friend to both belligerents cannot transport over the sea the effects of one to the use of the other, though also his friend. He is not allowed to aid and benefit the commerce of one belligerent to the prejudice of the other.

By investing his means, and participating in the trade and mercantile concerns of a belligerent nation, a neutral has, in effect, affixed to him the national character of the places at which he carries on his commerce.

The produce of the enemy's soil and country, owned by a neutral, while it remains in the enemy's country, particularly if obtained therein by a resident agent of the neutral merchant, has imparted to it the stamp of enemy property, and the owner is, *pro hac vice*, an enemy.

Vessel and cargo condemned for an attempt to violate the blockade and as enemy property.

The interest or expectancy of creditors in enemy property arrested as prize, even though amounting to a lien upon it, does not exempt it from capture as prize.

(Before BETTS, J., October 26, 1863.)

BETTS, J.: The above vessel and cargo were captured May 29, 1861, by the United States vessel-of-war Powhatan, in the Gulf of Mexico, near one of the mouths of the Mississippi, steering towards the river, and bound to the port of New Orleans, and were brought into this port for adjudication as prize. A libel for that cause was filed in this court against the prize, July 3 thereafter. The vessel was laden at Charleston with a cargo of rice on the 12th of May, 1861, bound to the port of New Orleans. Several parties intervened, and interposed claims and defences in the cause.

On the 23d of July aforesaid, Patrick Henry Ryan filed a claim as sole owner of the schooner, alleging that he was a citizen of the United States at the time the vessel sailed from Charleston, and so continued to the time of filing his claim.

On the 13th of July aforesaid, the firm of Trenholm Brothers & Co. (of which firm one member resided in New York, one in Liverpool, and six in Charleston) filed their answer and claim in the cause,

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*The Mary Olinton.*

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as agents of, and intervening for, John R. Armstrong, of Liverpool, and claimed that 102 tierces of rice, part of the cargo of the vessel, belonged solely and exclusively to the said John R. Armstrong. They deny, by their answer, the rightful capture of the vessel. They, also, by their answer, except to the sufficiency of the libel, in not charging against the vessel or cargo any act committed in violation of law; and they further allege that the libel does not, on its face, show any cause whatsoever for the detention of the vessel or cargo, or charge the existence of war between the United States and the State of South Carolina, or the State of Louisiana, or between the said States themselves, or the existence of any blockade, or the legal notification thereof, if one was imposed in fact.

On the 6th of July aforesaid, C. M. Fry & Co., of New York, filed a claim to the proceeds of 283 casks of rice, part of the cargo of the vessel, to be paid and accounted for to them by the consignee in New Orleans, towards payment of an indebtedness due to them by the shippers of the rice, in case the rice was delivered and sold in New Orleans; and they deny that the rice was subject to seizure, detention, or forfeiture, by reason of any matters alleged in the libel, and they also submit exceptions to the libel for insufficiencies in its allegations: 1. That it does not appear that a state of war subsisted, whereby the goods were subject to seizure, detention, or condemnation as prize of war; 2. That it does not appear that, at the time of the seizure alleged in the libel, any blockade existed or was duly notified, by reason whereof the goods were liable to seizure or condemnation.

On the 10th of July aforesaid, the firm of Sturges, Bennet & Co., of New York, filed their claim in the suit, to 75 tierces of rice, part of the same cargo, alleging that J. A. Buckmeyer, in Charleston, South Carolina, shipped the said quantity of rice on the vessel, to be delivered at New Orleans to S. L. & E. L. Levy, consignees there, to be sold, with a view to operate as a remittance for the payment of debts owing by Buckmeyer to the claimants, his creditors; that, subsequently to that shipment, Buckmeyer transferred to the claimants the said rice, to be received and sold by them to the end aforesaid, and that, at the time, Buckmeyer was indebted to the claimants to an amount exceeding the value of the said rice; that, at all times, Buckmeyer and the claimants were citizens of the United States, the former residing at Charleston, and the latter in the city of New York; and the claimants deny that the rice is liable to seizure or condemna-

tion. To this claim the same exceptions to the libel were annexed as to the one preceding.

The firm of Grinnell, Minturn & Co., of the city of New York, on the same day, July 10, filed a claim to 235 tierces and 3 half tierces of rice, part of the cargo seized in this suit on board of the vessel. They allege that the aforesaid parcels of rice were shipped May 10, 1861, in the vessel, at Charleston, South Carolina, by Henry Cobea & Co., of the same place, consigned to S. L. & E. L. Levy, of New Orleans, and, at the time of shipment and capture, belonged to the said shippers; that, on the 20th of June, the said shippers transferred the said rice to Street & West, of Charleston; that, on the next day, Street & West transferred the rice to the claimants, to be received and sold by them on account of Street & West, and the proceeds to be applied to the payment of the amount owing by Street & West to the claimants, and they to hold the surplus for their account, which indebtedness to the claimants was \$4,200 and upwards; and that, at all the times before mentioned, Henry Cobea & Co. and Street & West were each a commercial firm, doing business at Charleston, South Carolina, and the claimants were citizens of the United States, doing business in the city of New York.

The above issues were noticed by the United States attorney for hearing at the present October term of the court, and the defaults of all the claimants, except John R. Armstrong, the claimant of 102 tierces of rice, were taken, they having failed to appear and make defence. The case has now been heard upon such defaults of the other claimants as against them, and on the contestation of the claimant Armstrong, and the argument of his counsel, in regard to his interest and defence in this suit.

The objection sought to be raised through the claims, to the sufficiency of the libel in point of pleading, has no foundation or support in the prize practice in the English or American courts. (*The Fortuna*, 1 Dods., 81; Halleck's *International Law*, ch. 31, sec. 32.)

The judicial history of this case, patent upon the pleadings on file, and the concomitant action of the parties and the court in respect to the litigation involved in this suit, demonstrate that the points attempted to be brought into renewed discussion at this time were all definitely disposed of by the Supreme Court, in December term last, in the prize cases brought before that tribunal from various circuit courts of the United States. (*The Hiawatha*, 2 Black, 635.) The main questions of law raised on this case were distinctly made upon

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The Mary Clinton.

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the claims and answers filed by the several parties in the decision referred to, and are all resolved therein against the defences. The bar interposed by those defences consisted of these cardinal positions: that the hostilities subsisting between the government and the rebels had not the character and attributes of a public war, and that, accordingly, the rules of national law applicable to wars of that description did not govern the rights or liabilities of the respective parties assailed in this suit; that a lawful blockade had not been imposed by this government and put in force at the time of the arrest of the vessel in this suit; and that the property of persons domiciled or residing within the rebel States was not a proper subject of capture on the sea as enemy property. But the judgment of the Supreme Court determines that the proclamation of the blockade is, of itself, conclusive evidence that a state of war existed which demanded and authorized a recourse to such a measure under the circumstances existing in the case; that property devoted to illegal traffic becomes thus stamped as enemy property; and that the quality of hostility does not depend exclusively upon the personal sentiments or lawful allegiance of the party, but arises often from his actual or business residence, so that, the produce of the soil of the hostile country, engaged in the commerce of the hostile power, is legitimate prize, without regard to the domicile of the owner.

Ryan claims to be the owner of the vessel. Her register shows her ownership to be in New Orleans. The master testifies that he has no domicile, and that he resides with his vessel, and was born in Virginia. The mate knows no domicile of the master and his wife, except where his vessel is. The testimony shows that the vessel was laden at Charleston, and was despatched thence for New Orleans, in May, 1861. The vessel, on going out of the harbor of Charleston, was arrested and a warning was indorsed on her register by the United States boarding officer, not to enter any port in the southern States. That indorsement, which is introduced in evidence before the court, is perfectly legible and intelligible in its terms and signature, and is in this form: "May 12, 1861, boarded and warned off the southern coast by the U. S. S. Niagara, H. P. Dekraft, Lt. U. S. navy." When the vessel arrived off the Mississippi she was seized by the United States ship-of-war Powhatan. The master testifies that he does not know for what she was arrested. The mate says it was for attempting to break the blockade.

It is very plain, from the statements of the master and mate, independently of the above notice, that they were well aware that New



Orleans had been declared under blockade when the vessel directed her course there subsequent to her warning; and that, finding the proclamation fulfilled by a blockade efficiently enforced on her departure from Charleston, and her arrival at New Orleans, she repeated the violation of it, with full knowledge and designedly. There is, accordingly, no room for doubt that the violation of the blockade at both ports was direct and intentional.

It appears, by the pleadings, that the cargo on board of the vessel was procured at Charleston, by residents domiciled there, who acted as agents for John R. Armstrong, who is represented to be the owner of the cargo, and to be a neutral, resident in Great Britain. It matters not that Armstrong has a copartnership interest with his agents domiciled in the enemy's country, in the trade conducted in the products of that country with the enemy of the captors. A neutral friend to both belligerents cannot transport over the sea the effects of one to the use of the other, though also his friend. He is not allowed to aid and benefit the commerce of one belligerent to the prejudice of the other. By investing his means, and participating in the trade and mercantile concerns of a belligerent nation, a neutral has, in effect, affixed to him the national character of the places at which he carries on his commerce. (Halleck's International Law, ch. 29, §§ 26, 27; Upton's Mar. War., 124; The Dee Gebroeders, 4 Ch. Rob., 232.) The produce of the enemy's soil and country, owned by a neutral, while it remains in the enemy's country, particularly if obtained therein by a resident agent of the neutral merchant, has imparted to it the stamp of enemy property, and the owner is, *pro hac vice*, an enemy. (Sup. C. U. S. Decisions, note; Wheat. on International Law, Lawrence's ed., Supp., page 20; The Vigilantia, 1 Ch. Rob., 1) The interest of the claimant Armstrong in the cargo procured by him in Charleston, and shipped on the voyage in question, falls within the principle, and is confiscable as enemy property. It is, also, directly so in consequence of its having been knowingly transported from an enemy port under blockade, and designed to be carried to another blockaded port, and being arrested in the effort to break the blockade of New Orleans. The knowledge of the master and his culpable purpose are established by the written warning indorsed on the register of his vessel, and are proved, against his denial on his examination *in preparatorio*, by that document, and also by the testimony of the first mate of the vessel, on the same examination. The fact of the blockade, both at the port of departure and the port of destination, at the time of the appearance of

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The Emma.

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the vessel before those lines, and its efficiency, are demonstrated by the actual arrest of the vessel at each on its attempt to pass them.

The other claimants had no fixed property in the cargo captured. They had no higher interest than a privilege or lien, at the utmost, for the payment of pre-existing debts from the proceeds to be realized out of the various shipments of rice, on the sale thereof in New Orleans. It is clear, that the interest or expectancy of creditors, in enemy property arrested as prize, does not exempt it from capture as such, and, accordingly, the libellants are entitled to its condemnation and forfeiture. (Wheaton on Captures, ch. 3, § 15 ; The United States *v.* The Sally Magee, now on appeal in the Supreme Court, in which C. M. Fry & Co. are also claimants in part, and where like points of law are considered by this court.)

For the reasons above suggested, the vessel and cargo prosecuted in this suit are subject to condemnation and forfeiture.\*

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THE STEAMER EMMA AND CARGO.

This vessel and cargo were captured at sea by a vessel employed as a transport in the service of the United States, but not a commissioned vessel-of-war.

The filing by the United States of a libel against the vessel and cargo as prize is an affirmation by the United States of the capture, and such ratification is equivalent to an original seizure by authority of the government.

Destruction of the vessel's papers by her master just before capture.

Vessel and cargo condemned for a violation of the blockade.

(Before BETTS, J., October, 1863.)

BETTS, J.: This vessel and cargo were captured at sea by the steamer *Arago*, employed as a transport in the service of the United States, but not a commissioned ship of war, July 24, 1863, and were sent into this port, where the prize was libelled in this court, for condemnation. Such ratification of the arrest of the prize was equivalent to an original seizure by authority of the government, and the affirmation of the capture by the United States is authenticated by instituting this suit thereon. (2 Wheat., Appx., notes, p. 7.) The monition and attachment issued in the suit were duly returned in court August 18, 1863, with the usual proclamation. Thomas Sterling Begbie, of London, appeared, on such return, and filed his claim as owner of the vessel and cargo named in the libel, without exception of form to the regularity of the action. The cause was submitted by the United

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\*An appeal was taken to the Supreme Court from this decree, as to a part of the cargo, but not as to the vessel. Affirmed by default February 27, 1866.

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The Emma.

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States attorney to the decision of the court, during the present term, upon the proofs produced therein, no party appearing in defence to the action and issue on the pleadings.

The master of the vessel testifies, on his examination *in preparatorio*, that he took possession of the Emma at Glasgow, Scotland; that he declines to answer who put her into his possession; that she was captured in the Gulf Stream, off the coast of North Carolina, he supposes, for blockade running; that he, the witness, made no resistance to the capture, but exerted himself to escape from it; that part of the crew came on board the Emma in Glasgow, and part in Nassau, Bermuda; that the voyage was from the Bermudas, and was to have ended there; that the cargo on board at the time of capture was turpentine, resin, tobacco, and cotton, put on board at Wilmington, North Carolina, about the middle of July, 1863; that he sailed from Glasgow to Nassau, and from Nassau to Wilmington; that he, the witness, declines to answer who owned the vessel; that the owner lives in England; that he, the witness, does not know the owner of the cargo; that he has no papers of any kind in his possession in relation to the vessel or cargo; that the vessel was captured near the coast of North Carolina, July 24, near 11 o'clock a. m; that she had regular papers on board when she left Wilmington; that he burned them all on being chased, and when upon the point of being captured, to prevent their falling into the hands of the captors; that he knew that Wilmington was blockaded when he entered the port; that he evaded the blockade in going in, and was captured soon after leaving, on his way out; that he had known all about the war for many months; that his vessel entered the harbor of Wilmington covertly and secretly, whilst that port was under blockade, and sailed from it as before stated by him; and that he loses £1,000 in consequence of the capture, which was to have been his remuneration had he succeeded in completing his voyage.

The first mate concurs, in general, in the facts stated by the master. He says that he heard the latter say that he had destroyed the ship's papers, but he, the witness, did not see it done; and that he knew that the Emma had succeeded in running the blockade of Wilmington four several times.

The second officer of the vessel gives no testimony contradictory to the evidence of his fellow officers. He asserts no fact respecting this voyage, criminating the conduct of the vessel or of the parties prosecuting it. He says that he knows that the vessel had run the blockade of the same port at another time.

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The Merrimac.

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The steward of the vessel, on his examination, deposed to the same effect with the first and second officers of the vessel. To the 12th and 24th interrogatories he says: "She" (the vessel) "had run the blockade from Nassau and Bermuda into Wilmington, four times." To the 21st interrogatory he says: "I knew all about the blockade, and so did the captain."

No papers were captured with the vessel and produced in court with the prize and the witnesses taken on board.

This recapitulation of the proof demonstrates that the case is one of premeditated violation of public law, and that the vessel and cargo are plainly subject to judgment of condemnation and forfeiture.

A decree will be entered accordingly.

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THE STEAMER MERRIMAC AND CARGO.

Vessel and cargo condemned as enemy property and for a violation of the blockade.

(Before BETTS, J., October, 1863.)

BETTS, J.: This vessel and cargo were captured, July 24, 1863, at sea, on the Atlantic ocean, in latitude 33° 59' 30" north, and longitude 76° 55' west, off Wilmington, North Carolina, by the United States gunboat Iroquois, and were sent into this port for adjudication. They were libelled in this court, as prize, under such arrest, July 28, thereafter, and the warrant and monition on the process were duly served on the vessel and cargo on the same day. No person appearing thereupon, due proclamation was made in open court, and a decree of default was rendered against the prize property and all persons interested therein. The papers of the vessel and the proof taken *in preparatorio* were submitted to the court, and judgment of condemnation against the prize was prayed by the United States attorney.

A register of the vessel was recorded, in the name of the Confederate States, at the Wilmington custom-house, in North Carolina, to Richard Bradley, of that place, as owner, July 21, 1863. A shipping agreement with the master and crew, signed, without date, a manifest, a clearance of the vessel and cargo from Wilmington, North Carolina, to St. George's, Bermuda, and several bills of lading of the same direction, signed in July, 1863, were produced with the papers from the vessel. The cargo was cotton, spirits of turpentine, and tobacco.

This, upon the vouchers in writing, is palpably a case of the seizure of enemy property, *in flagrante delicto* of traffic, in an enemy vessel

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The Nymph.

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at sea. No citation of legal authority is requisite to show its confiscability. The deposition *in preparatorio* taken from the master of the vessel is in full harmony with the paper documents. He swears that he is a resident of North Carolina, and owes allegiance to that State and not to the United States; that the vessel was captured sailing under the confederate flag; that she was built in England, and was owned and sailed by a stock company in Wilmington; that he knew that the port of Wilmington was under blockade before he sailed from it, and saw the blockade squadron lying outside; that the cargo, he supposes, was the growth and manufacture of the southern States; and that there was a consignee in Bermuda for the vessel and cargo.

No comments need be added to this fulness of inculpatory evidence.

A decree is rendered, condemning the vessel and cargo to forfeiture.

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THE SCHOONER NYMPH AND CARGO.

The vessel having been captured within five miles of the enemy's coast, and about 150 miles off her true course, as designated on her papers, and no excuse being given for the deviation, and her cargo consisting partly of articles contraband of war, and wholly of supplies of urgent importance to the enemy, and no claim being interposed to the vessel and cargo, although the master was brought in and examined as a witness, the court ordered condemnation of vessel and cargo, unless their owner should, on application, obtain leave, prior to the third regular term after such order, to interpose a claim to the merits of the libel.

The libellants were allowed meantime to take an order for the sale of the prize property.

(Before BETTS, J., October, 1863.)

BETTS, J.: The above vessel had a certificate of British registry, at Belize, Honduras, dated March 26, 1863, to James McNab, of that place. She is represented to be of foreign build, but the place of her build is not stated in the registry. A shipping agreement was entered into between Alexander McCapping, master, and a ship's crew on the 2d of April, 1863, for a voyage from that place to a port or ports in the Gulf of Mexico, and thence back to Belize, or other port in the West India islands. A manifest of the cargo to be carried, destined to Matamoras, was found on board the vessel when arrested, and the vessel was cleared from Belize for Matamoras. The manifest included, amongst general merchandise, 90 coils of rope, 6 packages of brandy, 554 gallons of rum, 35 gallons of alcohol, 35 gallons of whiskey, 1 barrel of castor oil, 5 packages of medicines, 1 barrel of alum, &c. Her cargo at the time of her capture consisted of medicines, shoes, coffee, rice, sugar, dry goods, &c. The testimony given by the master of the vessel and a passenger on their examination *in preparatorio*, shows that the vessel sailed from Belize about the 2d of April, and was captured on the 22d of April in the morning, 4 miles off Pass

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The Nymph.

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Caballos, near Galveston, and about 5 miles from the light-house, because, as the master says, "they thought she had run the blockade." She had no log-book on board when seized. She was about 150 miles off her true course to Matamoras. No proof is furnished in excuse of so wide a deviation, such as that violent weather had been encountered, or some impediment to a direct navigation to Matamoras.

McNab, the owner of the vessel, is an English subject, now resident at Matamoras. No bill of sale of the vessel to him accompanies the register, nor any evidence of the payment of any consideration for the purchase. The master resides at Matamoras. The vessel was captured by a United States gunboat. The master knew that Pass Caballos and the coast of Texas were under blockade. The owner of the vessel was an Englishman, who resided with his family at Matamoras.

It is very obvious that the position, equipment, and circumstances of the vessel and her relation to the voyage, are all clothed with violent suspicions and presumptions against the fairness and honesty of the adventure. They abundantly justify her arrest in the attitude in which she was discovered. The suspicions are of such force as to demand at the hands of her owner the clearest explanation, to relieve her from the conclusion that she was purposely hovering on the enemy's coast with the intention of placing her cargo in the possession of the rebels. It consisted in part of articles contraband of war, and wholly of supplies of urgent importance and necessity to all the region held under blockade. Every inference would seem to be of controlling force that the vessel could not, on the facts in evidence, be 150 miles out of her true course on that short transit, and that she had purposely run directly from Belize to Galveston, with the design to deliver her cargo to the rebels.

The master was in court, convenient, at the wish of the owner, to claim the vessel and cargo, and vindicate the honesty of the voyage, had any defence been desired from him. A decree by default has been suffered, and the strong suspicions which justified the capture and that first decree call, also, for the final condemnation and forfeiture of the vessel and cargo, unless an application is made to the court, on proper grounds, on behalf of the real owner, for leave to intervene and give proofs in vindication of the lawfulness and integrity of the voyage in question. That opportunity will be accorded him if sought for, when he may be allowed to prove, if such be the fact, the *bona fide* ownership of the vessel and the honesty of her voyage, and to justify

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The Anglia—The Scotia.

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her being found almost in the act of entering a blockaded port, with a cargo most especially fitted for its necessities, at a point almost 200 miles aside from her alleged destination. The final judgment to be entered in the suit will be the one above indicated, unless a claim is permitted as above to be interposed to the merits of the libel previous to the term to be held in January next. In the mean time an order may be taken, at the discretion of the libellants, directing a sale of any portion of the prize not already disposed of.

Decree accordingly.

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THE STEAMER ANGLIA AND CARGO.—THE STEAMER SCOTIA AND CARGO.

The proper practice suggested on references to ascertain what vessels are entitled to share in a prize.

The right to all prize captures vests primarily in the government; and individuals derive no benefit from them, except by means of positive grant from the public authority.

Every vessel of a blockading squadron is bound to do all in its power in the service to be performed, and the law presumes that that obligation is fulfilled, unless the contrary be proved.

The rule is different with respect to joint associations or enterprises for war purposes by privateers or cruisers owned by individuals.

The doctrine of reasonable or equitable reward has no place in an inquiry as to the distribution of prize money to national vessels under the statutes on that subject.

The single fact that a vessel is one of a common force does not constitute her a participant in the prize shares obtained by the separate members of the force.

It must also be shown that the vessel was "in sight," or "within signal distance," of the occurrence out of which the taking of the prize was realized.

She must have been so situated as to be able, of her own accord, to contribute direct assistance to the captors by deterring the enemy from resistance, or by aiding physically in overcoming such resistance; and the vessel to be aided must have possessed the means of communicating intelligent directions to the one whose aid was needed.

The acts of Congress on the subject contemplate that the vessels should be in view of each other in order to correctly receive and respond to the signals given.

Under those acts, a vessel, in order to be entitled to share in the proceeds of prize property, must show that she was within signal distance of the vessel making the prize, in circumstances which might have justified the capturing vessel in demanding and expecting her assistance.

(Before BETTS, J., October, 1863.)

BETTS, J.: The above vessels having been captured and condemned as prize, the appropriate proceedings were taken to determine the ultimate disposition of the prize proceeds. The right to all captures vests primarily in the government. Individuals derive no benefit from them, except by means of positive grant from the public authority. (Halleck's Laws of War, ch. 30, §§ 3, 4; 2 Wildman on International Law, ch. 9.)

The statutory provisions governing the subject in the United States are very concise, but are in the most essential point deficient in the perspicuity and exactness desirable for practical and useful ends. The

first regulation of the matter by Congress was in the act of March 2, 1799, (1 U. S. Stat. at Large, 715, § 6,) and was this: "The produce of prizes taken by the ships of the United States" shall "be proportioned and distributed," and (article 9) "whenever one or more ships of the United States *are in sight* at the time of any one or more other ships, as aforesaid, are taking a prize or prizes, or being engaged with an enemy, and they shall all be so *in sight* when the enemy shall strike or surrender, they shall share equally," &c. The act of April 23, 1800, (2 U. S. Stat. at Large, 53, § 6, art. 7,) repeats substantially the last provision in the same language. The act of July 17, 1862, (12 U. S. Stat. at Large, 606, § 3, subdi. 4,) varies the phraseology in respect to the position of the capturing vessels with relation to each other, and directs that "when one or more vessels of the navy shall be within *signal distance* of another making a prize, all shall share in the prize," &c.

After the condemnation of the two above-named prizes, the directions of the 4th section of the act of March 25, 1862, (12 U. S. Stat. at Large, 375,) supplied the governing criterion to be pursued. The prize commissioners in this case were directed by the court "to proceed to take and report the requisite evidence to the court, to the end that a final decree may determine what public ships of the United States are entitled to share in the prize, and whether the prize was of superior, equal, or inferior force to the vessel or vessels making the capture." The commissioners sent to the court, in effect, their opinion or judgment upon the interpretation and scope of the law, and also a report of the evidence collected by them, determining, in result, that only two vessels, the *Restless* and the *Flag*, were entitled to share in either of the prizes, and that those two vessels were entitled to share in both.

It is not material to the case to consider the point discussed on the argument on this application, whether it is within the province of the commissioners to report to the court their judgment or conclusions as to the effect of the testimony taken by them on the questions brought to their attention, because it is indubitably within the competency of the court to adjudge definitively the subject under inquiry, whether by way of exception to the decision of the commissioners, or as an original point arising out of the proofs.

The two prizes were captured whilst attempting to evade the blockade of the port of Charleston. There is no question as to the justness of the report of the commissioners as to the title of the *Restless* and the



Flag to participate in the proceeds of the prize taken. The matter of difference and discussion between the counsel relates to the exclusion of the two other vessels from the class of share-takers.

The Housatonic and the Flambeau were two members of the blockading squadron, stationed off Charleston at the time the Anglia and the Scotia were captured as prize by the Restless and the Flag, and claims are interposed in their behalf before the prize commissioners as entitled to share in the distribution of the above prizes. The report of the commissioners is adverse to the claims of the Housatonic and the Flambeau. The counsel for the latter vessels except thereto, in substance, and appeal to the court against such decision, demanding that those vessels be decreed a title to share in the proceeds of the capture; the Housatonic because she was in sight of the prize when taken, and the Flambeau because she was within signal distance of both at the same time.

It will be needless now to debate the point of practice, whether under the special enactment of the 4th section of the act of March 25, 1862, (12 U. S. Stat. at Large, 375,) or according to the regular course of procedure in prize practice, there should be in the first instance a formal reference of the subject by the court to the prize commissioners to obtain their decision explicitly on the point, and then a review thereof before the court, by way of exceptions, as is the accustomed method in admiralty proceedings; because the substantial end to be attained, in either mode of practice, is effected by obtaining from the court a decision at large upon the facts and the law involved in the report of the prize commissioners. It may not be irrelevant to observe, however, that it would conduce to perspicuity and conciseness in this class of references to have them mutual between the government and the captors, and then that the judgment of the court in settlement of differences as to law or fact, arising between the parties on the reference, should be sought for, as in admiralty practice, by specific exceptions filed.

The contestant parties in the present issues are the representatives of the Restless and the Flag, the vessels which actually arrested the prizes, and those of the Housatonic and the Flambeau, vessels which composed in part, with the other two, the forces which invested Charleston, and were on their stations adjacent to that port when the prizes were taken. Accordingly, the broad proposition is raised for consideration in these proceedings, whether, on the whole case reported,

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The Anglia—The Scotia.

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the Housatonic and the Flambeau are entitled to share in the proceeds of these prizes.

The prize vessels were both of them captured in Bull's bay. At that time the Flambeau was stationed at Maffit's channel, off Charleston, sixteen miles distant from the place of capture. No signals were seen from the capturing vessels by the Flambeau at the time of capture. Several witnesses express the opinion that the Flambeau was within signal distance of the two prizes, the Anglia and the Scotia; and other witnesses, equally well situated to judge, express the opinion that neither the Housatonic nor the Flambeau was in sight, or within signal distance of the prizes or of the captor vessels at the time of the capture. The Housatonic is not proved to have been nearer to the scene of the transaction than the Flambeau. No evidence is given by the Housatonic or the Flambeau of any act of co-operation performed by either of them, in the capture of the Anglia or the Scotia, other than being at their stations in the blockading squadron, at a distance of about sixteen miles; nor is it shown that either of them saw or was seen by the prize vessels or the captor vessels at the time of the capture. The opinion is given by some of the witnesses that the stations of the Housatonic and the Flambeau were within signal distance, but no evidence is given that either of those vessels was at the time in sight of the transaction, whether that view is measured from the position of the prizes or that of the vessels claiming to share in their proceeds. The opinions given by the witnesses in that respect are not the result of actual experience, but are conjectural and from estimate only; and the statutory provisions are not clear of ambiguity, whether both the capturing and captured vessels are not to be, throughout the transaction, mutually within sight or signal distance.

The entire capture being, by the principles of prize law, the property of the government, national vessels are not entitled to compensation out of the proceeds, except by express grant. Every vessel of a blockading squadron is bound to do all in its power in the service to be performed, and the law presumes that that obligation is fulfilled, unless the contrary be proved. The rule is different with respect to joint associations, or enterprises for war purposes, by privateers, or cruisers owned by individuals. (Wheat. on Captures, 287; Halleck's *Law of War*, ch. 30, § 7.) The doctrine of reasonable or equitable reward has, therefore, no place in the inquiry before the court. It must be determined from the proofs before the court, whether the parties who claim an award of compensation out of the prizes, bring themselves

within the terms and purpose of the statutory enactments upon the subject.

It is plain that the grant of shares in prize moneys to vessels which are not the direct captors, is one of limitation and restriction. The single fact, that a vessel is one of a common force, squadron, or other association or denomination, does not constitute her a participant in the prize shares obtained by the separate members of the body or force. The claimant must show the additional qualification, that her position was in sight, or within signal distance of the occurrence out of which the taking of the prize was realized. If the designations of the vessel, in the several statutes, as being "in sight," or "within signal distance," are regarded as equivalent descriptions, their natural import would seem to be, that the vessel must be so situated as to be, of her own accord and discretion, able to contribute direct assistance to the captors, or to comply with any signal call given to her, by deterring the enemy from resistance, or by aiding, physically, in overcoming such resistance, and, accordingly, that the vessel or vessels to be aided must possess the means of communicating intelligent directions to the one whose aid is needed. To accomplish that, to any valuable end, it would appear that the acts of Congress must contemplate that the vessels should be in view of each other, in order to correctly receive and respond to the notices or signals given. The provisions in the acts of 1799 and 1800 manifest the purpose of Congress to limit the distribution of prize shares to such vessels of the navy only as are able to co-operate in promoting captures set on foot in sight of each other—that is, they must be, at least, in a condition to contribute immediate concert of action in the undertaking, if required by an associate vessel. In my opinion, the phrase, "within signal distance," employed in the act of 1862, in place of the prior expression, "within sight," may have been substituted as carrying within it a like import with the antecedent one, with, perhaps, a stronger significance, that proximity of position, in relation to the capturing vessels, must be such as to render intercommunication with the different consorts practicable and intelligible. The mere variation of phraseology, in a revision or re-enactment of statutory law, is not regarded as a revocation of the law, unless plainly so expressed. (Sedgwick on Constitutional and Statutory Law, 428 to 430, and notes.)

This construction of the law precludes the claim advanced in favor of the *Housatonic* and the *Flambeau*—that they stood, at the time, connected in this service, under the relation of a joint enterprise, and that

each is entitled to share in its advantages, upon the principles governing that class of associations.

Under the provisions of the English prize acts, the donation of prize proceeds was made to the takers. The English law courts had regarded the grant as comprehending, beyond the actual captors, those, also, who constructively contributed to the taking of the prize. But Sir William Scott is inclined to concur in the more recent views of the tribunals, that the limitation of the prize law should not be extended, but should be rather more closely restrained to the terms of the acts. (*The Voyheid*, 2 Ch. Rob., 22.) He refers to the case of *The Mars*, (note,) as fixing the doctrine, that several public ships, occupied in a common purpose, that is, to enforce a blockade, do not share as joint captors in a prize made by one of the number when they are not present at the capture. (*The La Flore*, 5 Ch. Rob., 268.) The same interpretation of the rule is applied by American writers; and the only vessels held to be entitled to share in a prize are those which are in sight at the time of the capture, their presence lending a constructive assistance to the capture. (Wheat. on Captures, ch. 9, art. 20; Halleck's Law of War, ch. 30, §§ 6, 7.) The mere physical ability to discern the prize, or even the seeing her from the mast-head, not imparting the ability to contribute assistance in making the capture, does not seem to have been recognized, in any authoritative case, as evidence of constructive assistance to another ship in effecting a capture. (Upton on Maritime Warfare and Prize, 204 to 220, 2d ed.)

The provision in the act of Congress of July 17, 1862, (12 U. S. Stat. at Large, 606, § 3, subdiv. 4,) that, "when one or more vessels of the navy shall be within signal distance of another making a prize, all shall share in the prize," &c., affords no indication that the established rules in regard to joint captors in prize cases are intended to be changed, or that investments of enemy ports by fleets or squadrons or united navy forces, are to be deemed joint expeditions or enterprises, and subject to the regulations applicable to naval services of that denomination. It will not be implied, constructively, that assistance has been rendered by a ship not palpably contributing to the capture of another, unless she was within signal distance of the one making the prize, in circumstances which might have justified the capturing ship in demanding and expecting her assistance, and the prize vessel in apprehending her interference. These facts must be affirmatively proved by the vessel claiming to share in the proceeds of the prize property taken.

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The Antona.

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I think that, in the present instance, the claims of the Housatonic and the Flambeau have been correctly disallowed by the prize commissioners.

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## THE STEAMER ANTONA AND CARGO.

Vessel and cargo condemned for an attempt to violate the blockades.

(Before BETTS, J., December 23, 1861.)

BETTS, J.: The steamer Antona and cargo were captured off Cape San Blas, Florida, by the United States war vessel Kittatinny, January 6, 1863, as prize of war. The vessel and cargo having been appropriated by the government at the appraised valuation of \$76,353 09, a libel was filed for the condemnation thereof, May 25, 1863, and the warrant and monition were thereupon made returnable in court June 26th thereafter, and, being served by publication and returned in court by the marshal, on motion of the United States attorney, in open court, the default of all persons interested in the said vessel or cargo, in not appearing to the said monition, was ordered and taken. By the joint consent in writing of the United States attorney and the counsel for the captors, executed July 2, 1863, and on application of the proctors for the claimants, the default was vacated by order of the court, and, on the 3d of September thereafter, a claim and answer, by consent of the United States attorney, was filed on behalf of J. and T. Johnson, merchants, of Liverpool, England, owners of the vessel and cargo, by Edwin Gerard, their agent. The answer and claim denies, in general, all the allegations made in the libel, and the jurisdiction of the court over the cause. It admits the taking of the vessel and cargo for the use of the United States, but charges that the same were unlawfully taken, without the intervention of any prize tribunal, and were unlawfully converted by the captors in the port of New Orleans; and it denies that the prize property was ever duly appraised by a board of naval survey or otherwise, or was brought within the jurisdiction of this court. The test oath made by the agent, solely, asserts no fact in relation to the ownership of the vessel or cargo, or the acts of the captors in its seizure or disposal, as within his personal knowledge.

The case was brought to hearing at the present term, upon the proofs *in preparatorio* and the ship's papers and the argument of the United States attorney, no brief or argument on the part of the claim-

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The Antona.

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ants having been furnished to the court, nor any application for further proofs made by the claimants.

The certificate of British registry, dated Glasgow, April 24, 1860, states that David Sloan and others, of the county of Lanark, were the owners of the Antona, and an indorsement on the same registry shows that George Wigg, of Liverpool, was, on the 16th of October, 1862, the owner of 64 shares of the vessel. The shipping agreement with the crew, dated Liverpool, October 31, 1862, is for a voyage from that port to Havana and Nassau, N. P., and back to a port of final discharge in the United Kingdom. There is a charter party, dated October 28, 1862, from George Wigg, owner of the vessel, (George Grindle, master,) to John and Thomas Johnson, of Liverpool, for a voyage to Nassau and Havana, with liberty to touch at intermediary ports for coals, &c. No mention is made, in the shipping papers, of the destination of the vessel to Matamoras. There is a clearance of the ship from Liverpool, November 1, 1862. The bills of lading of the cargo are all drawn to order, in blank, for the delivery of the cargo at Nassau, and no designation is made on them, or contained in any papers of the vessel respecting the cargo, that it comprehends any other than lawful merchandise and ordinary supplies for the ship's company, or that it is deliverable elsewhere than at Nassau.

The prize commissioners, on the 14th of September, 1863, reported to the court a sworn inventory of the lading of the prize, as consisting, in gross, of 618½ chests of tea, 1 case of needles, 1 case of sample-shoes, 40 cases of boots and shoes, 541 cases of brandy, 1 case and 2 barrels of sample crockery, 1 case of army buttons, 1 case of calf skins, 4 barrels of salt provisions, 4 cases of clothing, 1 cask of files, 1 case of assorted brushes, 3 coils of hemp, 2 gentlemen's coats, 29 casks of wine, 36 iron cans (patent) of caustic soda, 29 crates of crockery, and 5 cases of drugs.

The facts testified to by the ship's company, on the depositions *in preparatorio*, on the 12th, 14th, and 15th of May, 1863, in their clear bearing and results, prove that the voyage undertaken by the Antona was set on foot and conducted with the design to run the blockade of the port of Mobile, and furnish her cargo to the use of the enemy within the rebellious States.

The master deposes that the capture of the prize was made January 6, 1863, at 11 p. m, in latitude about 28° 50' north, and longitude 86° 11' west; that the vessel was taken to the blockading squadron off Mobile, thirty-six or forty hours after her capture; that she was

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The Antona.

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bound to Matamoras; that, when captured, she was on her way back to Havana, in consequence of having had to throw coal overboard to lighten her, because of having had heavy weather; that the voyage began at Liverpool, and was to have ended at Nassau; that from Havana the vessel went, on the 31st of December, towards Matamoras; that he had been at anchor before the capture, waiting for daylight to see the land, having been driven back northward in the heavy weather; that he wished to ascertain about his chronometer before returning to Havana; that, from the loss of coal, he would not have been able to complete the voyage to Matamoras; that he had just raised his anchor when the capturing vessel came in sight; that he believes that the cargo was consigned to order, on his arrival at Matamoras; that he expected these instructions from his agents at Nassau; that he should have waited for those instructions before disposing of his cargo; that he took a Gulf pilot on board to give him information, as he (the master) was unacquainted with the Gulf navigation; that he does not know the name of that pilot, or that his name was entered in the log-book; that when he raised his anchor he steered from the vessel which came in sight, and observed that she followed him 13 or 14 hours; that the Antona altered her course during the chase about  $2\frac{1}{2}$  points; that she had always been on the course of her destination on the ship's papers until he determined to return to Havana, in consequence of having been exposed to severe weather; and that the destination of the vessel at the time of her capture was Matamoras.

The testimony of Grindle, the master, has been stated more fully, to give the claimants the largest benefit they can derive from the statements and exculpation of the commanding officer under whose charge and directions the vessel and cargo were when captured. Only three other witnesses were examined—Horace Pontet, rated as boy on board the vessel, on the 12th of May, 1863, and William Cumming, first mate, and John Patterson, carpenter, both on the 15th of May, 1863.

The boy states no facts of any moment, not appearing to know anything other than outside occurrences common to a trading voyage from a port in England to another in the Gulf of Mexico.

The testimony of the mate and the carpenter is directly in conflict with that of Grindle, the master, and, if credited, proves beyond doubt that the design and effort of the master, after reaching Havana, were to run the vessel and cargo into the blockaded port of Mobile, and, also, that such was the purpose of his voyage from its inception. The

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The Antona.

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facts stated by Cumming and Patterson are in essential accordance, where they speak of things known to both of them, and they only differ on matters having a material bearing upon the guilt or innocence of the enterprise, where they relate particulars as being within their separate individual knowledge. For instance, Patterson, the carpenter, asserts it as within his knowledge that the vessel was in part laden with powder; and the mate is more positive and exact as to the movements of the vessel and soundings of her course taken along the shore to guide her progress into Mobile. Both of the witnesses are very clear and positive in their asseverations that the Antona went from Havana with the design to run directly into Mobile, and never was bound for Matamoras, or contemplated going to Nassau. They assert that the master took on board a man who was understood to be a resident of Mobile, as a Gulf pilot; that they were paid each a considerable sum of money at Havana, by the master, to keep silence as to the purpose and destination of the vessel; and that it was understood by the ship's company on board that she was to go where she had no right to go. Cumming, the mate, says that when he inquired of the master, after leaving Havana, where the vessel was going to, his reply was that it was none of his business; that he had never heard that she was bound to Matamoras; that, when captured, she was wide off the course given upon her papers, and was going up along the coast towards Mobile; that her course was altered, by order of the master, 12 or 14 points on the appearance of the capturing vessel, and that she was chased. Patterson says that it was the common report on board, after leaving Havana, that the vessel was to run the blockade. Cumming says that the Antona made all sail to avoid being taken by the capturing vessel, and that 31 shotted guns were fired at her before she came to.

The log book shows that the course of the Antona, after she left Havana, until she anchored close in on the Florida coast in 5 fathoms of water, on the 5th of January, was, generally, northwest or north-west by west.

From all the facts in proof it is clear, in my opinion, that, when arrested, the vessel was actively engaged in the endeavor to enter the port of Mobile, in violation of the blockade known by her master to be then maintained there.

A decree of condemnation and forfeiture must be entered.



## THE SLOOP D. SARGEANT AND CARGO.

The decision of the Supreme Court in *The Prize Cases*, (2 Black, 635,) as to the questions of war and blockade, applied to this case.

A citizen of a State in insurrection has, legally, no *locus standi* in a court of the United States, to contest a prize seizure.

Effect of a claim and answer in a prize suit, put in and verified by an agent, and not by the owner. Vessel and cargo condemned for a violation of the blockade.

(Before BETTS, J., December, 1863.)

BETTS, J.: The vessel and cargo in this case were captured March 12, 1863, off Galveston, by the United States vessel-of-war Kittatinny, as lawful prize. The vessel, as being unseaworthy, was sent into New Orleans, and was left there, after being appraised and valued at \$1,500. Her cargo was transmitted to this district for adjudication, and was here arrested, by due process of law, and proceeded against for condemnation, in the present suit.

The libel was filed May 12, 1863. The warrant and monition issued thereon were returned by the marshal duly served June 2, and an answer and claim on the part of the claimant was filed June 16 thereafter.

Two broad lines of defence are assumed by the claimant in his pleadings. He asserts his absolute exemption from liability to the arrest and prosecution of his vessel and cargo as prize, for the reasons, *first*, "that no war existed between the United States and any other people or nation or power, whereby any forfeiture or condemnation of the said vessel or cargo has been incurred;" and, *second*, that "no blockade of any port or ports existed or was known to the claimants, whereby the vessel and cargo were liable to any seizure, capture, or condemnation."

It is sufficient to observe, upon these points of defence, that, contemporaneously with the unlawful conduct of the vessel and cargo, pursued and directed through the personal agency of the claimant, the Supreme Court of the United States declared and pronounced each and every of these positions of the claimant to be erroneous and utterly fallacious in judgment of law. (*The Prize Cases*, 2 Black, 635.)

The express denial, in the answer, "that the vessel, at the time of her capture, was attempting to violate any blockade, or any proclamation by which any blockade had been established, demands no inquiry or consideration by the court, since the owner and master of the vessel testifies, on his preparatory examination, that he knew that the port of Galveston was under blockade, and that he intended, on this voyage, to elude that blockade if he could. He could scarcely hope

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The D. Sargeant.

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to cover that culpability by asserting that he came out of one of the passes of the harbor, and did not see either of the blockading vessels at the time.

The other witness, Brown, states the matter with more openness. He says that he knew that Galveston was blockaded; that he saw the blockading vessels off the bar; that when he shipped he knew it was the intention to run out and elude the blockading vessels; and that the vessel ran out of the St. Louis pass, and did not see any of those vessels at the time.

Both of the witnesses testify that the vessel came out of Galveston under the confederate flag. The vessel and cargo were purchased by the claimant in Texas, in February, 1863. The register of title was executed to him by the confederate government, February 27, 1863, on his own oath of citizenship and ownership, in Texas. This appears upon the face of the register. So, also, the bill of sale of the vessel, dated in Houston, Texas, February 18, 1863, conveys the vessel to the claimant, who is described therein as of that place, for the consideration of \$8,000. The shipping articles or agreement signed by the claimant February 17, 1863, as master, and by the crew, stipulate for a voyage to Honduras, or for a market, "and back to a port or place in the Confederate States of America." Those articles are certified, on the back of them, by the collector of Galveston, February 28, to be a true copy of the original then on file in his office. The master filed the manifest of his cargo, and obtained the clearance of his vessel at the custom-house at Galveston, on the same day. He testifies that he had no other than confederate colors and papers on board, and that he sailed out under a military pass from Houston. He asserts himself to be a native of Copenhagen, in Denmark, and says that his home for the last twenty years has been in New Orleans during the winter, and in the northern States during the summer. His own oath to his being a citizen of Texas, taken at Houston, on obtaining a registry of this vessel to himself, in February, 1863, concludes him as to the fact that he was then a citizen of an insurrectionary State, and an enemy of the United States. The claim interposed in his name would, accordingly, be a void paper, as he has legally, being a rebel, no *locus standi* in a court of the United States, to contest a prize seizure. But, furthermore, the claim filed in this case was interposed by an agent of the owner of the vessel and cargo, who does not assume to have personal knowledge of the facts he suggests; and the statement and attestation

by way of test oath thereto, in that method, inures in no way as evidence, nor does it amount to more than an argument by counsel on the instructions of the principal party. The court is not thereby called upon to moot the point whether such suggested circumstances would constitute a defence to the suit under the doctrines of international law.

The counsel for the claimant refers to a decision of the circuit court at the present term, in the case of *The United States v. The General C. C. Pinckney*, reversing a decision rendered in this court in the year 1862, in an analogous case. It appears, however, that the principle of law adopted by the district court was not discountenanced by the appellate court, but that the judgment was placed upon the further proofs introduced into the case after its appeal. The report of the new decree does not set forth the facts upon which the circuit court ultimately acted. It is needless for this court to remark, that if it were made to appear that this suit comes before this court with the same features presented by the one carried to the circuit court, the judgment of the latter would be entirely conclusive over this tribunal. Certainly, in a leading particular, the cases differ. The proof which controlled in the case of *The C. C. Pinckney* was accumulated evidence, as noticed in the decision of the appeal, demonstrating, beyond question, that the honest purpose of the claimant was to remove entirely his family and effects out of the rebel country so soon as the war was set on foot; whilst, in this case, there is not an iota of proof, written or oral, that the claimant had any other motive for the voyage he undertook, than to realize the advantage of a probably profitable mercantile adventure. He sought a neutral market for his cargo, and pledged himself, in the adventure, to return, with his vessel, within the Confederate States. The defence puts no other aspect upon the enterprise than that of a bold daring by the claimant of the hazard of running an efficient blockade of Galveston, with the enemy flag displayed, and, perhaps, the aid of the obscurity of night, or the use of greater dexterity and speed in the movements put forth than would be employed against his effort. The defence does not indicate that the claimant was seeking the protection and security of a friendly hand to favor his enterprise, for, on the record, he contemns all authority or right on the part of the United States to take cognizance of his open and flagrant violation of the blockade in this attempt. Only on being arrested in committing the guilty act does he assume the bearing of an oppressed man seeking to fly from rebel tyranny, and to shelter himself and his property under

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The Hattie.

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the guardianship of the United States. The avowal of that intention is suspiciously late.

I am of opinion that the case is a clear one for the condemnation and forfeiture of the vessel and cargo.

Decree accordingly.

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THE SCHOONER HATTIE AND CARGO.

After condemnation of the vessel and cargo, the decree as to the vessel was opened, by consent, on the application of loyal owners of the vessel, who showed that she had been previously captured from them by a privateer of the enemy. The court ordered the vessel to be restored to such owners on payment of one-eighth of her value, as salvage, to the captors.

(Before BETTS, J., December, 1863.)

BETTS, J.: The above-named vessel and cargo were captured as prize, June 21, 1863, at sea, off the harbor of Wilmington, North Carolina, by the United States war steamer Florida. On the 3d of July, 1863, both were libelled in this court, and were, by due process of law, condemned as forfeited, on default, by a regular decree of the court, July 21, 1863.

On the 17th of December instant, by consent of the United States attorney, the default as to the vessel was vacated in court, with leave that Thomas Hillyard and others might appear and make proof that they are loyal owners of the vessel, and that the same was captured at sea, as prize of war, by the Retribution, an armed vessel cruising under the authority of the Confederate States, and was appropriated to their use, and that, when seized in this suit, she was navigated in the interests of the said Confederate States, and that said Hillyard and associates might be permitted to intervene against the proceeds of the said vessel realized in this suit, and claim the same, on the allowance of lawful salvage to the captors of said vessel, the libellants in this suit. Pursuant to such consent the said Hillyard and others have this day filed their claim in this suit, alleging that they are *bona fide* owners of said vessel, and that she was seized and captured from them by a vessel called the Retribution. It is conceded, in writing, by the United States attorney, "that if the claimants establish their ownership of the said vessel by proper evidence, they will be entitled to the restoration of the said vessel to them upon payment of one-eighth of her value, as salvage."

The evidence presented to the court under the above claim consists of a copy of the register of the vessel made at the port of Boston,

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The Banshee.

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Massachusetts, November 7, 1860, to the claimants; the deposition of James T. Sparks, of Provincetown, Massachusetts, sworn to October 19, 1863, before a notary public; and the deposition of one of the claimants, Thomas Hillyard, taken before a notary public December 17, 1863, the assistant of the United States attorney being present and cross-examining the witness. No objection is made on the part of the United States to the competency and sufficiency of the said evidence to that end, and the proctors for the claimants having moved the court for a decree of restitution of the said vessel to them, the court is satisfied, upon the proofs aforesaid, that the claimants are loyal citizens of the United States, and are the true and *bona fide* owners of the said prize vessel, recaptured by the United States war vessel Florida.

It is, therefore, ordered and decreed, that the said schooner Hattie be restored to the claimants, on payment by them of one-eighth of the value of the said vessel.

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THE STEAMER BANSHEE AND CARGO.

Vessel and cargo condemned for an attempt to violate the blockade.

(Before BETTS, J., December, 1863.)

BETTS, J.: The above-named steamer Banshee and her cargo were libelled in this court December 1, 1863, charged with being rightfully subject to capture as lawful prize of war. They were seized at sea, off the coast of North Carolina, while attempting to violate the blockade there imposed by the United States government, and were sent into this port for adjudication. Process of attachment and monition was regularly issued, returned, and published in the case, and a decree by default was ordered by the court and registered therein December 22, 1863.

It is quite needless to rehearse the contents of the numerous documents and vouchers submitted to the court and examined by it in the consideration of this case, as the direct and explicit testimony of the witnesses examined *in preparatorio* demonstrates the culpability of the prize, and the court will avoid encumbering its files by repeating details which are of no service in establishing the causes for the conviction of the prize.

The certificate of British registry shows that the vessel was of English build and ownership, and was registered in Liverpool Sep-

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The Margaret and Jessie.

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tember 14, 1863, to Toulon Lawrence, merchant, of Liverpool, Jonathan Walkden Steele being master. The shipping agreements found on board the vessel show that she had been employed under the said master, in October and November, 1863, in voyages from Liverpool to Nassau, N. P., and from Nassau to confederate ports.

The master, on his examination *in preparatorio*, states that the vessel was captured November 21, 1863, about ten or twelve miles to the eastward of Cape Lookout, North Carolina, for attempting to run the blockade; that she had a confederate flag, and no other, on board, to hoist when going into a confederate port; that the United States vessel Fulton made the capture; that she fired sixteen shots; that the Grand Gulf fired four shots; that the prize was owned by E. Lawrence & Co., of Liverpool, England; that the witness was master of the vessel, and was appointed by Lawrence & Co., at Liverpool; that the vessel came out of Nassau November 17, 1863; that her voyage was to have ended in Wilmington, North Carolina; that the bills of lading, bags of letters, and other papers on the ship were thrown overboard during her chase; that he knew that Wilmington was under blockade and was at war with the United States; that the Banshee had run the blockade eight times under his command; and that they endeavored to escape from the capturing vessel, but were chased and brought to by being fired at.

The chief mate says that the chase of the prize continued from four to five hours, and that she was taken while attempting to run the blockade and get into Wilmington.

The second and third mates and the purser concur in the general tenor of the testimony of the master and first mate. No evidence is given by either witness exculpatory of the offence of attempting to violate the blockade of Wilmington charged and proved against the vessel.

A decree of condemnation and forfeiture is, therefore, upon the proofs, ordered to be entered against the steamer and her cargo.

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THE STEAMER MARGARET AND JESSIE AND CARGO.

Vessel and cargo condemned for an attempt to violate the blockade.

(Before BETTS, J., December, 1863.)

BETTS, J.: The vessel and cargo in the case were captured in about the same locality with the Banshee, and by the United States vessel Fulton, for the same offence.

The master, in his examination *in preparatorio*, states that the vessel and cargo were owned by a company or association residing in Charleston; that she was of English build; that she was laden at Nassau, N. P., and destined for Wilmington, North Carolina; and that the voyage was intended to run the blockade of that port. A large portion of her cargo was thrown overboard by her in the effort to escape the chase of the gunboat which pursued and captured her. There is no essential difference in the great mass of the evidence produced on the hearing. The master testifies that he was employed to break the blockade of Wilmington on this voyage. The first, second, and third mates and the steward corroborate the general evidence of the master, and prove, unequivocally, that the prize was engaged, carrying the confederate flag, to run the blockade at Wilmington. No appearance is made in this cause for any party, and no defence is found in favor of the vessel, upon the proofs.

The prize-master found no papers on board the prize, and was told that she had none.

The evidence establishes a clear case of an attempt to violate the blockade of Wilmington, with full knowledge, by all parties concerned in the enterprise, of its efficient existence. The vessel and cargo are, consequently, subject to condemnation and forfeiture.

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#### THE SLOOP EVENING STAR AND CARGO.

The vessel and cargo were owned by unnaturalized foreigners, residing in the enemy's country, who came in her out of a blockaded port of the enemy, with the sole purpose of escaping with their property from the enemy, and delivering that and themselves to the blockading squadron and to the authority of the United States.

Vessel and cargo restored, but without costs, there being probable cause for the seizure and the suit.

(Before BETTS, J., December, 1863.)

BETTS, J.: The above vessel and cargo were seized as prize of war May 29, 1863, in Warsaw sound, near the shore of the State of Georgia, by the United States gunboat Cimerone. The vessel being found unseaworthy, was appraised, by a board of naval survey, at \$10, and left at Port Royal, and her cargo was transported to New York for adjudication. A libel by the United States was filed in this court against the said prize August 19, 1863, returnable September 8th thereafter. A warrant and monition were issued thereupon, and were duly returned by the marshal, that the vessel had been taken by the government, and that the cargo was attached under the said process. On the same

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The Evening Star.

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day Frank Schwieren intervened, and filed a claim, under his own oath, as part owner of the vessel and cargo, "and for Frederick W. Rose, the other owner," asserting therein that those owners were in possession of the sloop and cargo at the time of their seizure, and were the true and *bona fide* owners of the same. The naval survey reported the valuation of the vessel and tackle, on her arrest, to be ten dollars, and the prize commissioners, on an appraisal of her cargo, made under the order of the court September 30, 1863, reported the same to amount to \$3,892 50.

The cause was brought to hearing December 9, 1863, on the part of the government, when the claimants, by the assent of the district attorney, moved for and obtained the order of the court that "they have twenty days from that date to take and introduce further proofs" in the cause. Such further proofs were taken before one of the prize commissioners, on the attendance of the United States attorney and the proctor for the claimants, and were reduced to writing by the commissioner on the 29th of December, and were filed in court the next day by him. All the papers, with the briefs of the counsel for the respective parties, were submitted to the court for consideration December 31, 1863.

It appears, from the papers produced from on board the vessel by the prize-master, the certificate of ownership, the manifest, and the clearance given at Savannah, Georgia, April 22, 1863, and from the preparatory proofs, that the vessel was despatched from Savannah in the latter part of May last, on a voyage from that port to Nassau, N. P.; that the vessel was a sloop of about nine tons burden, old, and of small value, being worth about ten dollars; that she was laden with a cargo of cotton, both vessel and cargo being owned by the claimants in the cause, who were residents in Georgia, but Prussians by birth, not naturalized; that one of them was unmarried, and that the other was married, his wife residing in one of the Confederate States. The vessel sailed from Savannah under the rebel flag, and a rebel pass furnished her at that port.

The testimony of the two owners is positive and direct, on the preparatory examination and the subsequent one given under the allowance of further proof, that their actual and sole purpose in coming out of Savannah was to escape, with their property, from the confederate authority, and deliver the vessel and cargo and themselves to the protection of the blockading squadron, and to the authority of the United States, as loyal citizens thereof. The collateral evidence of the intention of the claimants, manifested by declarations of theirs to friends



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*The Merrimac.*

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before the despatch of the vessel, and by efforts and preparations set on foot by them, indicates a fixed purpose and anxiety on their part to separate themselves personally and their effects from all connexion with the insurrectionists, and to become wholly detached in interest and residence permanently from them.

I perceive no ground to doubt the fairness and reliability of the representations given in evidence in this cause, and am of opinion that it satisfactorily brings the present case within the principle declared by the circuit court in the case of *The United States v. The General C. C. Pinckney*, and that the withdrawal of the property in question from an enemy and blockaded port does not subject it to capture as prize of war.

A decree will be entered that the libel be dismissed, but without costs, there being sufficient probable cause for the seizure and the suit.

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THE STEAMER MERRIMAC AND CARGO.

The proceeds of property captured as prize of war belong exclusively to the government, and can be distributed or allotted only according to direct and positive authority of law. Under the acts of March 25, 1862, and July 17, 1862, (12 U. S. Stat. at Large, 375, § 4, and 607, § 6.) an armed merchant vessel, not in the service of, and having no commission from, the United States, although she is present at the capture of a prize and co-operates therein, is not entitled to share in the proceeds.

(Before BETTS, J., January, 1864.)

BETTS, J.: The Merrimac was captured at sea by the United States vessel-of-war Iroquois, and was condemned in this court as lawful prize. The merchant steamer Eagle interfered actively, and probably serviceably, in intercepting and delaying the prize in her endeavor to evade a blockaded port of the enemy, and escape from the Iroquois while in chase of her. On the reference to the prize commissioners, under the decree of condemnation, to report the proper distribution of the prize proceeds among the capturing vessels, the master of the steamer Eagle interposed a claim on her behalf that she should be decreed entitled to share, as one of the captors, in that distribution, but stated that his ship had no commission from the government. That application was opposed on the part of the Iroquois on the ground that the Iroquois was the only public ship of the United States present or within signal distance at the time of the capture, and the prize commissioners so reported the fact to be; and furthermore reported, that the capture was made by the Iroquois, and that the armed merchant steamer Eagle was present at the capture and co-operated therein.

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The Merrimac.

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Under the laws of the United States, the proceeds of property captured as prize of war belong exclusively to the government, and can be distributed or allotted only according to direct and positive authority of law. (Act of March 25, 1862, 12 U. S. Stat. at Large, 375, § 4; Act of July 17, 1862, Id., 607, § 6) The statute law names the public ships and armed vessels in the service of the United States as exclusively entitled to share in the distribution of prize money. The power of the courts under our laws is, accordingly, limited to that special method of allowance. It is the fundamental doctrine of all governments that the title to prize property vests in the nation, although the modes of exercising or enjoying that dominion may be widely various. (The *Elsebe*, 5 Ch. Rob., 173.)

The rule as to sharing in prize captures is of broader range under the English law than under the American. The prize is there regarded as belonging, in a larger sense, to the admiralty or to the crown, as representing the right of the admiralty, and the distribution of its proceeds as subject to the instructions of the admiralty or the crown, and as not depending entirely on statutory enactments. The numerous cases in the English courts, cited and commented on by the counsel for the *Eagle*, on the hearing, are all within that general principle. Accordingly, whatever may be the intrinsic importance of the service rendered by the *Eagle* in this capture, or the gallantry or hazard accompanying its performance, the court is not empowered to consider any other question than the legal right of the vessel to demand a compensation to herself out of the prize fund.

It is clear that that right is not given by any statute or other authoritative public grant. It must, therefore, be denied by the court.

Decree accordingly.

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THE STEAMER MERRIMAC AND CARGO.

The question of the costs taxable to the prize commissioners considered.

The act of March 25, 1862, (12 U. S. Stat. at Large, 374,) discussed as to the compensation provided by it for the prize commissioners.

The tariff of allowances to the prize commissioners, prescribed by the court under that act, explained.

The act of July 17, 1862, (12 U. S. Stat. at Large, 608,) restricting the compensation to each prize commissioner to \$3,000 per year, discussed.

The difficulty of carrying out the statutory provisions as to the compensation of the prize commissioners set forth.

A prize commissioner cannot have taxed to him *custody fees* in respect of a *vessel*.

Custody fees to a prize commissioner in respect of a *cargo*, are a personal allowance to him for an individual trust executed by him. No third person is authorized to assume such custody,

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*The Merrimac.*

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and a charge by a prize commissioner of such fees, where his possession of the cargo was merely constructive, and not personal, will not be allowed.

The court refused to allow to a prize commissioner a charge of one *per cent.* on the proceeds of a vessel and cargo, as custody fees, for holding them in possession less than thirty days, and until they came into the custody of the marshal, on a warrant of arrest.

(Before BETTS, J., January, 1864.)

BETTS, J.: A list of items for allowance or taxation in this cause was submitted to the court by one of the prize commissioners in November last. It was authenticated by the deposition of the commissioner, in the usual form required for the allowance of the particulars charged. The bill amounts to \$2,184 81, and is thus verified: "Henry H. Elliott, being duly sworn, says that the foregoing bill is true and correct, according to the best of his knowledge, information, and belief; that the charge of \$2,184 81, above mentioned, is not more than a just and suitable compensation for his services in this cause, as he verily believes. Sworn November 30, 1863." To the bill was also appended a consent in writing, signed by the United States district attorney, and also by Messrs. Sandford & Woodruff, Messrs. Owen, Gray & Owen, and Mr. Donohue, proctors, representing various captors in the suit, that the bill be taxed at that sum. But there is no evidence offered proving that special services of any description were rendered, or liabilities incurred, by the commissioner, in consequence of the custody of the cargo. One item charged in the bill was of this tenor, the whole being in print, except the sums and the times of the services, which were filled in in writing: "Custody fees for taking and holding the prize property until it passed into the charge of the marshal, being less than thirty days, the same fees as are allowed by law to him for custody fees, viz., one per cent. on \$202,741 16; the gross proceeds thereof, \$2,027 41." The court returned the bill to the commissioner for further explication of the grounds upon which the item was charged, particularly inquiring what period of custody or actual keeping of the cargo was covered by it.

The evidence presented in support of the item in that respect consists of the affidavit of John Perry, an employé of the prize commissioners. He testifies "that, in the employment of the prize commissioners, he went on board the above prize vessel when she was brought into this port, with a steamboat chartered for that purpose; that the prize was lying in Buttermilk channel; that he found her cargo in a very bad condition, and very much scattered about over the vessel; that he took charge of the cargo, and took the vessel into the Atlantic docks, under the orders of the prize commissioner; that, on reaching the

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docks, she was boarded by the commissioner, and her hatches and cargo duly secured and sealed; that he remained on board and kept the vessel and cargo in custody, on behalf of the prize commissioners, for two days steadily, and thereafter was on board from time to time; that night watchmen were placed and retained on board by the commissioners during his absence, until the vessel was duly delivered into the custody of the marshal; that, under the orders of the commissioners, he took an accurate inventory, at the time, of all the loose and exposed cargo, and reported it to them; that, when he took charge of the cargo, it was exposed to pilfering and loss; and that the charge and custody of the cargo, by the commissioners, was necessary for its protection and safety."

In the commissioner's bill of costs no special charges are entered for the services and disbursements spoken of by this witness, but a general charge, in print, of \$25, is made in the bill, independent of the item of \$2,027 41, particularly in question on this taxation, in the following terms: "Proceeding to the steamer, and taking possession of the captured property; taking information in reference to the situation and condition thereof, and whether bulk had been broken, &c.; placing the seals of the commissioners upon the hatches, &c.; examining into the safety of the property, and attending to the proper care and protection thereof, &c." So, also, an antecedent item in the bill provides compensation to the commissioners for the receiving, receipting, &c., of the prize effects and papers by them from the prize-master, \$5 50.

The account of proceedings in the initiation of the suit in the district attorney's office represents that the prize was brought into this port July 28, 1863, and states that the libel was filed, and process thereon issued, on the same day; and the account from the marshal's office is, that the process was served the same day upon the vessel and cargo. This discrepancy, no doubt, arises from inaccuracy of memory in the deponent Perry, who states his personal action and that of the commissioners regarding the prize, prior to her arrest by the marshal, from his recollection at the time his affidavit was attested to, December 24, 1863, which was five months after the business in which he took part was transacted, and who cannot be expected to be as exact and reliable as to time as official entries or files.

The court must, accordingly, regard the claim for compensation charged in the main item in question at \$2,027 41 as resting virtually

upon services constructive in character, and not flowing from official acts performed by the commissioner personally, or any responsibilities imposed upon him in the particular which is made the basis of this claim. The verification attested to by the commissioner, November 30, 1863, comprehends the whole bill. He says "that the foregoing bill is true and correct, according to the best of his knowledge, information, and belief; that the charge of \$2,184 81, above mentioned, is not more than a just and suitable compensation for his services in the cause, as he verily believes." The judgment of the commissioner may be proper, that, in the aggregate, his compensation for his entire services in the cause should be rated and allowed at \$2,184 81. But that consideration cannot be regarded in determining the value of the particular items set forth as subjects for allowance. Each of them must be passed upon on the strength of its individual legality or intrinsic worth.

The consent of the United States attorney, and of the proctors for the three other war vessels co-operating in the capture of this prize, to the allowance of the above bill as stated by the commissioner, cannot justify the court in directing an amount to be paid to the commissioner out of the prize proceeds under the control of the court, which is not within the provisions or contemplation of the law which places that fund at the disposal of the court. This court has never considered that it possessed a rightful authority to devote to the officers of the court moneys arising out of captures in prize proceedings, upon any other principle than those which govern the judiciary in the exercise of fixed directions of law, and with as careful an adherence to its spirit as if literally declared by Congress in a code of specific fees.

Limiting the operation of these general remarks at present to the case of compensation to prize commissioners, the following positions of law are deemed to exist in respect to the reward they are entitled to obtain for their services under the adjustment and determination of the court: The act of Congress of March 25, 1862, is the first specific regulation made by positive law for the services and compensation of prize commissioners as public officers. The first section of the act designates various duties to be performed by them; and the third section appoints the method of their compensation. The statute is obscure and indefinite in its main features, and very difficult of satisfactory interpretation and execution. It points out no method by which the courts are to ascertain the value of the services rendered by these offi-

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cers, none of which are rendered in face of the court, or within its personal knowledge, or are of a character likely to fall within its familiarity, nor does the law indicate what limitation, if any, shall be applied to the amounts to be awarded. The duties prescribed are partly legal, partly clerical, partly mercantile, and in part miscellaneous, and appertaining to the skill and experience of persons conversant with mercantile and general business transactions, and not supposable to be familiar to the individual experience of members of courts of justice, or to their professional or official pursuits or habits. The statute supplies no assistance to the court by a jury, assessors, referees, or other agencies, through which a reasonable approximation to the measure of "suitable and just compensation" called for may be attained. No existing course of public employment is known which can be recurred to for a precedent or ground of proceeding to guide the action of the court with any appreciable certainty, particularly none which gives countenance to the awarding of a compensation to possibly a mere day-laborer on a scale adequate to recompense a high trust assumed to have been performed by a bailee acting in an official capacity.

Immediately on the passage of the act of March 25, 1862, the court applied itself, with the active aid of one of the prize commissioners, a lawyer of long experience and high distinction in the profession, to searching for precedents in books of practice, and to gathering the usages of the government in the allowances made under its authority to its employés for services of a similar character and nature, with a view to frame a scheme of compensation which might comport with and carry into effect the enactments of the law. The main purpose was to adopt a tariff of allowances for the particular services imposed upon the commissioners, which should be commensurate with what was anticipated would be their probable character and value, and should keep in view a restriction of the allowance, in the aggregate, to five thousand or six thousand dollars per annum. Congress had evinced, by long-continued legislation, its purpose to restrict the compensation of its officers discharging the highest civil and judicial functions within this district, to rewards not exceeding in gross the sum of \$6,000 yearly; such as the justices of the Supreme and circuit court, the sub-treasurer, the collector, the postmaster, the naval officer, the United States attorney, the marshal, &c.; whilst other officers, charged with multifarious and responsible trusts, and frequently guaranteed by heavy pecuniary sureties, were remunerated for services, not dissimilar in

character from those expected from the prize commissioners, with less than \$4,000 per year; such as the judge of the district court, the clerks of the circuit and district courts, and all the subaltern officers of every other department of public service, military, naval, and financial; the tenure of most of such offices being, like that of the prize commissioners, at the discretion of the appointing power. In preparing the scheme of costs or compensation for the prize commissioners, the court was anxious to designate, with positiveness, the specific amount of allowance for each item of service, where it could be determined, from statutory appointments or well-established usages, for like services in other situations under the government; and where such method could not be pursued, then to have the allowances claimed left to the judgment of the court, upon specific evidence as to the *quantum meruit*, submitted for its guidance on taxation. The question arising on the present taxation is of the latter order. It was yet to be ascertained, from actual practice, whether the duties of the prize commissioners would be adequately paid by moderate additions to the stated fees appointed in the schedule arranged by the court, or whether, from year to year, the discretionary allowances reserved for special items must be varied so as to secure about the proposed compensation of five to six thousand dollars yearly, above necessary disbursements. The opportunity to meet that result substantially was expected to be attained principally by the adoption of the provisions for unfilled blanks, one of which is now the subject of consideration.

A provision of that kind had existed in the stated admiralty rules of this court since 1828. It was derived from a prior authority given by statute, (1 U. S. Stat. at Large, 277, § 4,) and was continued as a usage of the court of admiralty, in respect to the compensation of the marshal, for the custody of seized goods, after the enactment ceased to be in force as to vessels and goods. (District Court Rules, 49, 50, 51.) All these allowances are subject to discretionary alteration by the court. (Rule 52.)

But, independent of that qualification to the claim to this enhanced mode and rate of compensation, in prize proceedings, under the admiralty rules, the discretion which the court might exercise under section 3 of the act of March 25, 1862, is regarded as inhibited or limited by the act of July 17, 1862, (12 U. S. Stat. at Large, 608,) which prohibits the annual salaries of prize commissioners being so increased, in any way, as to exceed, in the aggregate, the sum of three thousand dollars. Since the act of July, 1862, no amount of merit, or even losses

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proved to have attended the performance of their duties by the prize commissioners, can authorize the court to enlarge their yearly emoluments above \$3,000. The court is clothed with no power, by either act, to adjust that salary or maximum allowance, *pro rata*, upon prizes placed in the keeping of the commissioners during any other period than the particular year in which the services charged for were performed; and that, frequently, cannot be practically fulfilled by the court. Instances now exist in which cases of the condemnation of prizes in this court in the early stages of the war stand at this time undecided by the courts of appeal, and no execution can go from this court to make out of other prizes the sums adjudged to the commissioners for their services in those cases. Nor, however ample to that end the proceeds of prize property captured and condemned within a year may be, in their general amount, can execution out of this court touch any portion of the fund, except that made out of the individual vessel in respect to which the services represented by the execution were rendered. So long as the captured prize proceeds exist, they must be made to contribute their proportion to this salary lien; and the demand cannot be lawfully attached to other prize proceeds held by the court. This state of facts leaves the court no means of fulfilling the direction of the two acts of March and July, 1862, but by an effort to compute conjecturally whether the current services of a commissioner, rated according to the tariff first adopted by the court, will amount to the sum of \$3,000 for a particular year, which can alone be paid to him for his services during that year.

The court has not officially before it a return, in numbers, of the prizes seized and prosecuted to conviction, from July 17, 1862, to the close of the year directly succeeding, but a note taken from entries in one of the offices of the court shows that eighty-four arrests and condemnations were prosecuted during that period in this court. Evidence can be easily furnished from the papers in the respective causes, showing the exact amount of costs estimated in those suits; but it is assumed that the sum taxable against these eighty-four cases will average all of \$100 in each case for the services of the prize commissioners, deeming both commissioners to be actually engaged in performing their duties. That will give \$8,400 per year, which will be an excess of \$2,400 above the legal compensation payable to the two, subject, of course, as is specified in the taxation, to the limitations prescribed by statute in the payment thereof.

In the present case, however, it is to be observed, that only one of the



commissioners presents, as claimant, a bill of services to be taxed. He cannot ask to have adjudged to him over \$3,000 for a year. That is to be provided for out of *pro rata* assessments upon each of the 84 cases; and, in strictness, if the court could have made known to it the services performed in all of those suits, each case would be assessed, upon like items, exactly the same charges, up to a complement, from the whole, to the amount of \$3,000, and nothing over that sum. Then, in this case of the Merrimac, the entire taxation to be levied for this bill would not, in all reasonable probability, surpass fifty or one hundred dollars. The terms of the two acts of March and July, 1862, do not supply the court the means to effectuate that intent of the law, by bringing together the proceeds of captures for any particular year and allotting them to discharge the assessment. That can be done only by the Navy Department. But, by the statute, each vessel is exempt from liability for this class of services, except for the year in which the services were actually performed in relation to her. It is to be further noted that the prize commissioners are not created accounting officers to the treasury for surpluses of moneys paid over to them under orders of the court; and that the government possesses no remedy against them for excesses paid to them, if such exist, other than through personal actions therefor, as multifarious as the prizes from which the surplus payments are derived.

The court, in administering these complex enactments, in the spirit of justness and equity, will, accordingly, be actuated by two prominent considerations: *First*, to so adjust the assessment imposed upon the prizes for the payment of the prize commissioners, as to fairly cover the salaries of the persons performing the duties of those offices whenever the amount subject to taxation is reasonably sufficient to that end; and, *second*, to avoid, with equal care, withdrawing from the beneficiaries to whom prize proceeds are devoted by law, after payment of the legal costs, moneys not lawfully payable to any officers of court. The court cannot, in principle, regard the government as any more empowered to divert such surpluses from their lawful destination to other uses, than the court or its officers are to misappropriate the moneys under their special charge.

In review of all the legal and equitable considerations applicable to the particular item of taxation in question—the charge of one *per cent.* commission on \$202,741 16, the aggregate amount of the proceeds of the prize vessel and cargo in this suit, resulting in a charge of fees or compensation, as above stated, of \$2,027 41—I observe, 1. The value

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of the steamer, \$65,000, does not fall within the contemplation of the admiralty rule respecting "custody fees." That rule relates to goods or personal effects solely; and the value of the ship must necessarily be excluded from the charge. With regard to the cargo, it is not proved that extra labor or expense was imposed upon the officer by its custody, as it was all retained on board the vessel. 2. Custody fees on the cargo, (\$137,741 16,) are, in their nature, a personal allowance to the bailee, for an individual trust executed by him. The reading of the rule denotes that it contemplates the fulfilment of a special confidence imposed by the court upon an official person, intermediate the interposition of another official, the marshal, by a superseding authority. No third person is authorized to assume such custody. He must be the official, individually. The judge of the district receives the prize from the captors, under the directions of the prize law, and he only can designate the person who is to take it into manual possession prior to its seizure by due process of law. The prize-master has no authority to put the prize into the custody of a servant of a commissioner. His delivery must be an actual one to the lawful substitute of the judge. The custody of the goods or cargo must pass in reality from the prize-master to the commissioner, to constitute a legal delivery to the latter, and must be receipted for by him. The rule gives no compensation to the commissioner for the acts and doings of his servants or employes, independent of his special directions and supervision, so as to constitute the act personal by the officer. It is obvious that the rule contemplates a possession of the seized property purely official, and of the shortest duration practicable, until it is put under the guardianship of legal process. The allowances named are subject to variation, for cause adjudged by the court, in order to keep the compensation in reasonable correspondence with the labor and responsibility incurred.

The proofs in this case show that the commissioner had a mere constructive possession of the cargo, no further, and for no other purpose, than that which is provided for under the standing charge allowed for "taking possession of it, with the papers, and placing his seal upon the hatches," &c. The affidavit given by Perry, the employé of the commissioner, in the first instance, proved no personal services performed by the commissioner in respect to the custody of the cargo. A supplementary deposition made by him on the 7th of January, 1864, and a deposition made by Prize Commissioner Eagle, on the 8th of January, evidently under a misapprehension of dates, states that the commission-

ers had possession of this cargo, and performed acts for its safe-keeping, previous to its being arrested by the marshal. This statement, however, if accepted as further proof, does not show that this was extra duty, entitled to a special compensation, under the principles adopted by the court in the above decisions. But Commissioner Eagle and Mr. Perry are, both of them, in error in supposing that they were in possession of the prize on the 1st of July. It appears, upon the record and proofs in the cause, that the vessel was captured off Wilmington, North Carolina, July 24, and was brought into this port July 28, and was arrested and taken into actual custody, upon the process of attachment, on the same day, by the marshal.

I cannot, upon the evidence before me, regard the commissioner as entitled to have taxed any part of the item charged for "custody fees," amounting to \$2,027 41.

If application is made to permit further proofs to be given formally by the commissioner in support of that item, such privilege will be allowed, under a like power to any other party interested in the funds, to offer counteracting proofs; and evidence will also be allowed to be given by any party in interest, tending to determine whether it be necessary and lawful, for the satisfaction of salary due the commissioner, for the year following the custody of this prize, that any portion of the item in question, or of other surplus commissions remaining in court, be appropriated to satisfy such arrearage. In case such power and necessity exist, it, doubtless, is within the competency of the court to rate such a proportionate allowance towards such deficiency as may, under all the considerations, be found to be reasonably proper for that purpose.

In arranging the tariff of charges, the court took into consideration the probability that the prosecutions, on the success of which the compensation of these officers is dependent, would occasionally be defeated, or fail to yield proceeds adequate to their satisfaction; and, accordingly, the estimates were framed with a view to meet such deficiencies. Moreover, the bills up to July 17, 1862, were allowed in contemplation of the payment of \$6,000 per annum to each commissioner. Since the passage of the act of limitation of that date, the prospective assessment on prize proceeds should be diminished accordingly, whenever the court is satisfied that the confiscation may be carried into effect, so as to secure their compensation to the commissioners upon a lesser rate of allowance out of the fund.

## THE SCHOONER HATTIE AND CARGO.

A charge by the prize commissioner, in his bill of costs, of one *per cent.* custody fee on the proceeds of the vessel and cargo, disallowed.

The act of July 17, 1862, (12 U. S. Stat. at Large, 608, § 12,) forbids the allowance to a prize commissioner in this district of any larger emolument than a salary of \$3,000 a year.

(Before BETTS, J., January, 1864.)

BETTS, J.: This is a case of the adjustment of compensation to Prize Commissioner Elliott, upon facts and circumstances similar to those which existed in the case of the Merrimac. The prize was arrested off Wilmington, N. C., June 23, 1863, and was sent into this district for adjudication, and here libelled on the 3d of July thereafter. A defence was interposed December 17, 1863, and a final decree in the suit was rendered by the court December 28, 1863. The bill of costs was submitted to the court for adjustment on the 5th of January instant.

In this case, as in that of the Merrimac, the commissioner charges one *per centum* custody fee, computed upon the joint products of the vessel and cargo, being the sums of \$64,146 18 from the cargo, and \$2,025 from the vessel. The custody fee amounts to \$661 71, and, in addition, there are special items of service, which make the whole charge amount to \$846 11. The evidence presented in support of the aggregate charge consists of the deposition of the prize commissioner who performed the duties, made on the 5th of January instant, who says "that the bill is true and correct, according to the best of his knowledge, information and belief, and that the charge of \$846 11, above mentioned, is not more than a just and suitable compensation for his services in the cause, as he verily believes;" and of the consent in writing of the United States district attorney that the bill be taxed at the sum of \$846 11.

The charges claimed in the bills of the United States prize commissioners for services performed prior to the act of Congress of July 17, 1862, were assessed provisionally by the court, subject to adjustment and payment at the treasury, pursuant to the laws of Congress in relation to indeterminate claims against the government, the bills almost universally claiming repayment of disbursements or liabilities, as well as conjectural valuations of official acts not identified by proofs as specific performances.

The act of July 17, 1862, (12 U. S. Stat. at Large, 608, § 12,) having forbidden the salary to a prize commissioner to be increased in any case, under any of the prize acts, so as to exceed \$3,000, I feel con-

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strained to refrain from sanctioning items in his claim of costs which must presumptively enhance his compensation beyond that maximum. The consent of the district attorney cannot dispense with the limitation of the statute. I must, therefore, in this case, upon the evidence before me, decline to allow the charge of \$661 71, or any part of this sum, for custody fees in this suit. Both bills will be approved by the court, if the approval is asked for by the commissioners, after these deductions are made.

The observations made by the court in the case of the Merrimac apply with like effect to the same items of charge in this case. The two bills are corrected, accordingly, in this taxation or allowance, upon the reasons more fully stated in that case.

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THE BARK SALLY MAGEE AND CARGO.—THE SCHOONER FOREST KING AND CARGO.—THE BARK WINIFRED AND CARGO.—THE SCHOONER LYNCHBURG AND CARGO.

An appraiser appointed by the court, on the application of the claimant, to appraise the prize property, with a view to its delivery on bail to the claimant, not having been paid his compensation, applied to the court to tax his costs for the service, and direct them to be paid out of the proceeds of the property, but the application was denied.

The charges of appraising and bonding such property must be borne by the party who applies to have it bonded.

The appraiser having charged one *per cent.* on the value of the property appraised, and the prize commissioners having reported that one-half of that amount would be a proper compensation—*held*, that the appraiser had no right to demand a *quantum meruit* for his services, or any further reward than the *per diem* allowance provided by statute or the standing rules of the court for that description of services.

(Before BETTS, J., January, 1864.)

BETTS, J.: Proceedings were taken before the court, in the term of July, 1861, after the arrest and prosecution of the above vessels and portions of their cargoes in prize, to obtain, on the part of the claimants, an appraisal of the coffee laden on board each vessel, with a view to bonding the several vessels and the coffee seized with them.

In the case of the Sally Magee and her cargo, it appears that the district attorney objected specifically to the allowance of the application made by the claimants to have the prize delivered up on bail, but it does not appear that the libellants either disputed or agreed to the motions made for like orders in the other above-mentioned suits. Orders were, however, granted, in all the cases, that the vessels and cargoes should be delivered to the claimants, on bond, after appraisal by a single appraiser designated in the respective orders, who, it seems, took the

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oath of an appraiser, and assumed the duties of the office, and made return of his valuations in the matters submitted to him, and his report, which was duly placed upon the files of the court. It is to be implied that the respective parties were cognizant of the action of the appraiser in all the suits, and assented to or acquiesced in its result.

The compensation claimed by the appraiser not having been paid to him, his counsel applies to the court to adjust or tax his costs for those services, and order their satisfaction out of the prize products remaining within the jurisdiction of the court. Notice of such application was served by his counsel on the United States attorney, but no appearance in opposition to the motion has been formally made by any party.

The court has hesitated to act upon this application, and has required explanations of facts and law, to justify interference in these matters judicially, and an award of costs individually to or against any party to these suits, or an imposition of them on the proceeds of the above prizes yet remaining within the authority of the court.

In the first place, no practice in prize actions is pointed out which entitles claimants in prize suits to demand a delivery of prize property on bail to them, or for their benefit, as against government captors, or to intermeddle with it at all, except for its preservation when in a perishing condition. These proceedings were not based upon allegations of that character, and do not appear to have been further noticed on the part of the government, than in the refusal of the district attorney to consent to the application of the claimants to bail or appraise the prize property. If, however, the acts of the captors are to be considered as an acquiescence on their part, in the entry of orders by the court to name an appraiser and surrender the prizes to bail on appraisal thereof, yet it is in no way shown to the court that the libellants proceeded affirmatively in the matter, or possessed any interest or authority in or over the appraisements. The entire transaction seems to have been induced and carried to completion at the instance and for the convenience of the claimants solely. The natural result would be, that expenses so created should be defrayed by those alone who incurred them. The court is not aware of any rule in the civil or common law which subjects a suitor *in rem* to repay expenses made by a respondent in reclaiming from the custody of the law to his own possession property under seizure *pendente lite* as to the legal title to such possession. At first impression, most assuredly, the charges of

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appraising seized property and bonding it fall exclusively upon the party who seeks to force it out of the custody of the law.

No evidence is furnished to the court that any judgment or decree has been pronounced in these suits, imposing costs of any amount upon the libellants carrying on these several actions, or that there has been any recognition, on the part of the United States, of a legal or equitable liability for the services rendered on the occasion in question. There does not appear to have been any previous stipulation in court, or any personal arrangement between the parties, that the compensation claimed by the appraiser shall be allowed for his services out of the arrested effects, if such arrangement could be lawfully made obligatory upon the government.

Feeling the difficulties of acting upon these claims for costs, I sought explanations from the claimant, on the first presentation of the bills for taxation, on the supposition that the claim might be sustainable on some legal or equitable grounds, as to what period of time had been devoted to making the appraisal, and as to the circumstances attendant upon the transaction. Obtaining no clear satisfaction on the subject, and the gross charges, amounting to \$2,980, being moved for immediate allowance by the counsel for the appraiser, the court, on the attendance of the counsel for the appraiser, and of the United States attorney, and on their consent thereto, on the 7th of October, 1863, ordered that the bills of the appraiser be referred to the prize commissioners to ascertain and report whether any, and if so, what, sum or sums should be allowed to him for the services mentioned in the bills and affidavits upon which the motion was made. The commissioners reported November 6, thereafter, in substance, that the charge rested upon a demand by the appraiser of one *per cent.* on the gross value of the goods appraised, being \$2,980, and that, in their opinion, the sum should be fifty *per cent.* less, or \$1,490. It appears from the claim of the appraiser, and the evidence reported by the commissioners to the court, that the basis of the allowance claimed was the skill and experience of the appraiser in the employment, and not at all the time or labor bestowed in the performance of the service. No authority is pointed out to the court, sanctioning the application of so vague and indeterminate a rule of compensation for the common service of appraising merchandise merely for the purpose of bailing it. The notion of some of the witnesses, that the reward for such class of services is "regulated by commercial usage, and that a *per diem* allowance would not be in accordance with such usage," is clearly a misapprehension

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of the law governing the proceedings of the judiciary of the United States. The public business continually demands the "skill and experience" of mercantile men, in ascertaining and determining the value of merchantable commodities in the markets of the great importing and exporting ports of the country; and Congress, aware of the necessity for the employment of such agencies, has naturally made provision for their use and compensation.

By the act of March 1, 1823, (3 U. S. Stat. at Large, 735, 736, secs. 16, 17,) the President is required to appoint in various ports appraisers qualified for the duty, to appraise merchandise—in this port, one at an annual salary of \$2,000, to transact the class of business performed by Mr. Scott, the appraiser now in question; and, if a merchant appraiser is designated by the court to the duty, he is to be paid at the rate of \$5 per day. A subsequent law augments the salary, but makes no change in regard to the compensation to merchant appraisers. (9 U. S. Stat. at Large, 618, sec. 5.) So, by the standing rules of the district court, appraisers selected for similar duties under its authority receive a reward therefor of \$3 *per diem*. (District Court Rules of 1838, rule 67.) The compensation is limited to that sum "for each day necessarily employed in making the appraisement."

It would thus appear, that the claimant, his counsel, and the prize commissioners were under a grave misapprehension in supposing that the value of the services rendered in this case is to be determined by commercial usage, and that a *per diem* allowance is not in accordance with such usage; and also in their conclusion that a very large percentage in amount was the legal measure of reward for services of exceedingly vague duration and difficulty.

It appears by the papers on file, that, in the case of the Sally Magee, the appraiser was sworn into office July 29, 1861, and reported his valuation of the cargo the next day, with \$690 40 fees therefor. The oath in the case of the bark Winnifred was subscribed July 15, and the appraisal reported was filed July 19, with \$806 40 fees therefor. The files in the cases of the Forest King and Lynchburg do not show when the appraiser was qualified or the time of his report. The fees claimed by him are \$600 in the case of the Lynchburg, and \$883 20 in the case of the Forest King.

The prize commissioners, as before stated, report the value of these services to be, in the aggregate, a moiety of the sum charged, but assign no reason for that diminution of the amount, or why the deduction should not be a greatly larger proportion of the original demand,



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or upon what principle of *quantum meruit* the discretion of the court should be induced to adopt \$1,490 as a fair and reasonable allowance. No guide, legal or equitable, is indicated in the report of the prize commissioners, which should lead the court to select the sum suggested by them in place of that claimed by the appraiser, nor any that does not as well support the *per diem* allowance fixed by statute and the rule of court for similar services. The time which the agent is to give to his employment is a cardinal element in estimating the reward to be allowed therefor. Manifestly, Congress so regards it in fixing the salaries and *per diem* compensation to this class of agents. The salaries granted to the chief and assistant appraisers, and to merchant appraisers for occasional acts of appraisement, approximate so closely as to denote that Congress intended the scale of reward to be framed upon a common consideration. It would be unreasonable to suppose that the government intended that the man called in to render a single service of a day or two, or even only a few hours' continuance, should be entitled to receive a compensation greatly surpassing what is allowed for the employment of an entire year devoted to the same line of duties, and those generally of surpassing difficulty and importance, inasmuch as the official appraiser is expected to be competently qualified to determine the values of numerous and diversified merchandises, while the merchant appraiser is expected to furnish an opinion upon an article familiar to his experience. In illustration, Mr. Scott, a coffee dealer, is required to pronounce his opinion upon the value of parcels imported in four vessels, and there is no evidence that a week, or half of that time, was expended in fulfilling the duty imposed upon him by the reference. For this service he claims to be paid \$2,980, and the prize commissioners report him to be entitled to \$1,490, while the law gives but \$2,000, or, in the extreme, \$2,500 a year, as compensation to the official appraiser for services embracing the examination and valuation of all descriptions of merchandise, natural products, and fabrics of art. I cannot intend that the law contemplates such inequalities in its application or construction.

Examining this application upon its particular facts, and also upon general principles, I feel constrained to determine as follows:

1. It is not made to appear to the court that the appraisals of the cargoes of coffee, in these proceedings, were moved for and ordered by the court in the interest of the United States, or that the United States are legally or equitably responsible for the services performed by the applicant, or that the coffee, as prize property, is subject, in kind, to the demand of the applicant.

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2. Clearly, the appraisements sought for and ordered in these suits were in the interests of the parties claimants in the suits, and, according to the regular course of practice in admiralty, would be at their charge, they alone being benefited by the delivery of the property to their possession. If anything different from that was understood between the proctors in the cases, that was matter of private arrangement between them personally, and was in no way embraced or contemplated in the orders of the court. The court possesses no authority, in law, to enforce arrangements of that character, *in rem*, against public property in the custody of the law, or the proceeds of it in the charge of public depositaries.

3. An order in a cause pending in court on the seizure of property by the United States, made *in invitum* against either party, and by the mutual assent of both, with a view to an appraisal preparatory to bailing the property, imports no right in the appraiser to demand for his services in the matter a *quantum meruit* compensation, or any further reward than the ordinary *per diem* allowance provided by statute or by the standing rules of the court for that description of services. A different rate of taxation, if acquiesced in or expressly consented to by the counsel for the respective parties, cannot be enforced by the court.

Having no adequate proof before me that the coffee, or its proceeds, if yet within the jurisdiction of the court, is liable, in law, to the claim under this application, or that the lawful amount of compensation claimed by the applicant is recoverable out of the property or fund referred to in the application, the motion to the court upon the papers must be denied. The application and the papers are, accordingly, left subject to the orders of the applicant.



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THE STEAMER NASSAU AND CARGO.

The fee bill of February 26, 1853, discussed, in its application to prize suits.

The prize acts of March 25, 1862, (12 U. S. Stat. at Large, 375,) and July 17, 1862, (Id., 608,) considered, as affecting fees to counsel for the captors.

Congress intended, by these acts, that the employment of counsel in prize cases, in order to warrant their compensation out of the prize fund, should be for the assistance of the district attorney, and in protection of the interests of the captors in common, and should be authorized or recognized by the Secretary of the Navy.

The court in this case refused to charge on the prize fund the bill of costs of a counsel employed by the captors, who did not bring himself within this rule.

(Before BETTS, J., January 17, 1864.)

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*The Nassau.*

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BETTS, J. : As some novel questions of law and practice have arisen in this case, the court has reserved the disposition of them for a few days in order to have an opportunity to state the reasons governing the decision rendered. Should the present condition of the law on the subject remain, and prize captures continue to be brought before the courts for adjudication, it may become important to the profession to understand the principles upon which the adjustment of costs in cases similar to this will be made by the court.

The above suit was instituted July 12, 1862, conformably to the usual course of practice, in the name of the United States, and by the attorney of the United States of this district officially. In form and character, it is an action within the admiralty cognizance of this court, and under the sole superintendence and control of the district attorney, (1 U. S. Stat. at Large, 92, sec. 35 ; 2 Id., 761, sec. 6 ; 10 Id., 166, sec. 3 ; 12 Id., 375,) over which no other officer possesses any legal control, except it be conferred by statutory authority. In the progress of the suit, as appears by the papers on file, Mr. Arnoux, Mr. Sandford, and Mr. Upton, counsellors of the court, became concerned as counsel for the captors in the cause, under retainer directly, either by the commanding officers of the capturing vessel or by the Secretary of the Navy. The action was placed upon the trial docket of this court at the November term thereafter, and was brought to a final hearing at the December term, 1862, and the vessel and cargo were then condemned and forfeited as prize of war by decree of the court.

The district attorney, Mr. Upton, and Mr. Sandford have each presented bills of costs in their own behalf for substantially the same items of services in the suit, in conducting it from its inception to its termination, claiming the right to have those costs adjusted and paid to them in the character of counsel for the libellants, under the provisions of the 3d section of the act of Congress approved March 25, 1862. Mr. Arnoux has not as yet formally presented his bill in that capacity, although he has made known to the court his relation to the cause. The bills of costs prepared by the district attorney and Mr. Upton have been heretofore adjusted by the court, and it is presumed have been regularly acted upon by the accounting officers of the government. That of Mr. Sandford, now under consideration, stands upon circumstances distinguishable in important particulars from the claims of the district attorney and Mr. Upton, and their allowance supplies no authority or precedent, determining the course to be followed in respect to other officers of the court, holding only the relation

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of counsel for individual captors. The differences will be further adverted to subsequently.

Counsel, merely in that character, have no provision made for them in the standing fee bill, regulating their fees or costs in suits in court, and either fixing the amount or the mode of recovering the same. (10 U. S. Stat. at Large, 161.) District attorneys are recognized therein, in transacting the usual business of a suit, only in the capacity of attorneys, and are compensated as such. (Id., § 1.) That statute has been generally understood to have codified into positive enactments the vague allowances of costs to the officers of court designated in the act, and to have annulled the system for some time prevailing in the federal courts to compensate legal services by fees given at discretion by the courts. The first section expressly declares that the compensation fixed by statute shall be in lieu of all other rates or modes of allowance in the courts of the United States, reserving the right to solicitors, attorneys, and proctors to bargain with their clients, and receive, in addition to taxable costs, such reasonable satisfaction as may be agreed between the parties, or may be in accordance with general usage within the State where the services are rendered. By sections 3 and 5 all contradictory provisions of law are repealed; and it would be difficult, since the passage of that fee bill, to uphold any rate of charges for law services, resting upon the usage or practice of admiralty or prize courts, variant from the existing fee bill.

The argument, in support of the bill of costs submitted to me for approval, proceeds mainly on the assumption that the costs claimed are granted by the 3d section of the act of March 25, 1862. If this position be tenable, the claimant is of course relieved from the restrictions of the fee bill of 1853, and stands upon the ground of *quantum meruit*, or upon the rule of custom or usage, as to the rate of his counsel fee, so far as that guide may yet exist in this court on the subject.

The act of March 25, 1862, has not yet been the subject of judicial interpretation in this respect that I am aware of. It is painfully obscure in some of its vital provisions. The face of the 3d section does not limit the number of suitors who may come into a prize litigation individually, and be guaranteed their expenses out of the general fund on condemnation of the prize, whether they personally, or the vessel with which they were connected, had any concern in the capture or not; and the question must arise whether the court can avoid recognizing each man of a crew, or of a squadron, or of an entire fleet, as

a competent party to be represented in court by counsel, and compelling compensation to such counsel without regard to the necessity of his aid or its intrinsic value.

In this particular instance, three distinct counsel claim to be representatives of two officers of the capturing ships. They show no express appointment from any other individuals. No authority from the sub-officers and crews appears upon the files empowering those two persons to intervene and represent the body of captors, nor any that would entitle the other men composing the equipages of the capturing vessels to place themselves in the same attitude with those officers, and come into the suit in their own right, as captors. Mr. Upton alone acts under an appointment embracing the rest of the crew. By virtue of the act of July 17, 1862, the Secretary of the Navy authorized Mr. Upton to act in behalf of the unrepresented crew, which in this case is the whole of them. (Official letter of the Secretary of the Navy of September 6, 1862.)

The language of the 3d section authorizes the fund to be charged with counsel fees for "the counsel for the captors." Can the commanding officers of separate ships claim to themselves a right to these fees without authentic powers of attorney from each member of the crew? or can they, *virtute officii*, represent the whole crew, and collect their distributive shares out of the prize proceeds? These and other uncertainties are not solved by the terms of the law, and must, therefore, be determined by legal construction of the meaning and purpose of the legislature. If that intention fails to be disclosed in the enactment itself, it may be sought in concurrent legislation *in pari materia*, and the more directly coincident in point of time a concurrent enactment may follow, the more impressive and effective it will become as a key of interpretation.

On the 17th of July, in the same session, Congress passed an enabling or declaratory clause respecting the prosecution of prize suits, providing, among other things, that "the Secretary of the Navy is hereby authorized to appoint an agent, or to employ counsel when the captors do not employ counsel themselves, in any case in which he may consider it necessary, to assist the district attorneys and protect the interests of the captors, with such compensation as he may think just and reasonable." (12 U. S. Stat. at Large, 608, sec. 12.) This authority was executed by the Secretary of the Navy in the official letter above referred to. The Secretary enumerates several conditions accompanying the appointment—"that of furnishing such information

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as the department may require in relation to cases pending or to be brought before the court," and "that the services would be expected to continue in every case, without further charge, until a termination of judicial proceedings."

In reading together the concurrent clauses of these two acts, a strong implication is afforded that Congress meant that the retainer and employment of counsel in prize causes, in order to warrant them compensation out of the prize fund, should be for the assistance of the district attorney in the suit, and in protection of the interests of the captors in common; and, in that way, and in so far as they are acting under the recognition and authority of the Secretary of the Navy, either by his direct selection, or their employment by the captors themselves, in cases in which he may consider it necessary, they would be entitled to compensation as provided in the law.

The act of March 3, 1863, (12 U. S. Stat. at Large, 760, §4,) repealing and explaining the prior enactments referred to on this subject, affords strong evidence that the prior provisions were only intended to cover and be "confined to compensation for such services as may be rendered necessary by reason of the captors having interests conflicting with those of the United States, and proper, in the opinion of the court, to be represented by separate counsel from those representing the United States."

I do not consider that the legislation of Congress in regard to prize suits has annulled the principles of practice governing admiralty cases, and also equity and common law actions. The courts possess and will exercise their inherent powers to restrain, in cases presenting numerous parties possessing common rights of action or defence, the crowding of the pleadings and records of the court with multitudes of persons not necessary to determine the rights in litigation. Neither will parties be permitted to encumber and embarrass the proceedings of the courts by the introduction of needless numbers of proctors, solicitors, or attorneys into the control of, or interference with, the actings of the courts. A suitor may undoubtedly employ, at his own expense, attorneys or counsel at his discretion, but the court, when appealed to, must prevent the burden of such charge being transferred to and placed upon the subject in litigation, arbitrarily, at the discretion of particular suitors.

I think that this suit, having been commenced in the name of the district attorney, and Mr. Upton, under the appointment of the Secretary of the Navy, having assisted in conducting the prosecution, from

its institution, in favor of the captors, and having had the adjustment and payment of his costs therefor out of the proceeds of the prize, prior to the presentation of Mr. Sanford's bill of costs for allowance, and no order of the court, or of the Secretary of the Navy, having been previously made, connecting him, as counsel for the captors, with the suit, his claim cannot be lawfully adjusted by the court and charged upon the fund. Under these circumstances, his retainer, by the captors named, was a personal one, and they are individually liable to him, if at all, for his professional services. In that respect, such services may be eminently valuable to captors. Unjust and unreasonable charges brought against the fund may be defeated or diminished; the claims of competitor captors, or their counsel may be avoided; and the proceeds of the prize within the jurisdiction of the court may, through the watchfulness and diligence of the counsel for the captors, be protected from important losses through illegal disbursements in its collection or keeping, or improvident delays on the part of agents who hold it in possession without prompt distribution. It is those extrinsic acts of supervision and control which it must generally be most useful to have wisely and actively performed for captors by their counsel; and the court cannot intend that Congress meant that each captor should be entitled to appoint counsel *ad libitum*, who should receive a full bill of costs out of the prize fund.

The written argument submitted by Mr. Sandford in this case was able and satisfactory. My certificate to his bill of costs is not withheld because of the inadequateness or want of force and pertinency of the argument, but on the ground that I do not consider his legal relation to the cause as authorizing the court to tax his costs against this fund. The distinction between the efficacy of the consent of the district attorney to the taxation of the gross bill of costs to Mr. Sandford, and the assent of the same officer to the taxation of Mr. Upton's costs, is, that the latter holds his connexion with the suit directly through statutory appointment.

It is proper to remark, that although I decline to allow Mr. Sandford's costs against the proceeds in court in this suit, without exceptions to the items charged in the bill, I do not mean to be understood as passing any opinion upon the legality or justness of those allowances. Those questions have never yet arisen before me for judicial determination. An allowance for compensation to the United States attorney has been adjusted by the court, in obedience to the peremptory terms of the third section of the act of March 25, 1862, but on the con-

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The Emma.

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struction of all the laws applicable to the subject that he could not be paid, by virtue of the taxation and because of his services in prize cases, any sum exceeding his official salary; and, in respect to the counsel appointed by the Secretary of the Navy, his compensation was fixed, under the statute, by that officer, and was not originally taxable by the court. The question will, therefore, be open for adjudication before the court, in any cases arising on the taxation of costs to counsel for captors in prize suits, unaffected by any previous action of the court.

The opinion of the court in the present case, therefore, is, that the costs demanded by Mr. Sandford are not taxable by the court against the fund in this suit.

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THE STEAMER EMMA AND CARGO.

It appearing that the prize property was captured by a United States steam transport ship, no other vessel co-operating therein, or being within signal distance at the time, and that the prize vessel was of inferior force, the court, to carry into effect the act of June 30, 1864, allowing vessels not of the navy to share in a prize in certain cases, referred it to a commissioner to report the names and employments of the captors on board the transport ship present and engaged in the capture, and the relative compensations properly allowable to them severally.

(Before BETTS, J., July 8, 1864.)

BETTS, J.: The above-named vessel and cargo having, by the judgment of this court, rendered in the term of October last past, been condemned as prize of war, and the report, dated December 23, 1863, made to the court by the prize commissioners, under the order of the court, to take evidence and report to the court what public ships of the United States are entitled to share in said prize, showing that the capture was made by the United States steam transport ship Arago, no other vessel co-operating therein, or being within signal distance at the time, and that the captured vessel was of inferior force, and it appearing to the court, by the provisions of the act of Congress, entitled "An act to regulate prize proceedings and the distribution of prize money, and for other purposes," approved June 30, 1864, that vessels not of the navy, present at the capture of a prize and rendering actual assistance in the capture, may share in the prize, and it appearing to the court, from the report of the said prize commissioners, that the said ship Arago was the sole vessel present at the capture of said prize, and that said prize was of inferior force to the Arago, and it being moved by the counsel for the owners of the Arago, and assented to by the United States attorney, that the Arago, under the provisions of the existing law, be admitted to receive her lawful share of the aforesaid



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The A. D. Vance.

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prize proceeds, and the court being further moved to refer it to a commissioner of the court, to ascertain and report to the court the persons belonging to the Arago entitled to share in the said prize, and the proportions thereof lawfully appertaining to each, it is considered and ordered by the court that it be referred to John A. Osborn, esq., one of the commissioners holding an appointment as such by the United States circuit court within this district, to inquire and ascertain, from the report therein heretofore made by the prize commissioners, and other legal proofs, the names and employments of the several captors on board the Arago, present and engaged in the actual capture of the prize aforesaid, and the relative rewards and compensations properly allowable to them severally, and to report the same to the court with all convenient despatch. It is further ordered, that such commissioner have taxed for his services the like costs as are taxable under the fee bill of February 26, 1853, for similar services rendered in admiralty causes in courts of the United States.

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THE STEAMER A. D. VANCE AND CARGO.

Vessel and cargo condemned for a violation of the blockade.

(Before BETTS, J., September 29, 1864.)

BETTS, J.: The above vessel, and the cargo and lading on board of her, were captured at sea, September 10, 1864, by the United States war vessel Santiago de Cuba, Captain O. S. Glisson, of the navy, commanding, and were sent into this port for adjudication September 16, 1864. On the same day a libel was filed in court against the said prize by the United States attorney, and process of attachment and monition, returnable on the 27th of September following, was issued from the court to the marshal, and was, by the marshal, returned in court on the aforesaid return day, duly served; whereupon public proclamation was made, in open court, of such service and return, in due form and order of law, and no appearance or claim being interposed or offered thereupon in behalf of the aforesaid prize, or any person interested therein, judgment of condemnation and forfeiture thereof to the United States was, on motion of the United States attorney, then and there made and ordered, in open court, in due course of law.

The vessel, when seized, had on board a certificate of British registry, issued at the custom-house in Dublin, September 26, 1862, to

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The A. D. Vance.

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Joseph Royce and others, of the county and city of Dublin, merchants, as joint owners, under the name of the Lord Clyde, British-built, at Greenock, Renfrew county, Scotland. A certificate was indorsed on the registry by the register, at the custom-house, Greenock, May 21, 1864, that Joannes Wyllie had that day been appointed master of the ship, in place of John Stephen Byrne. No shipping papers, crew list, charter-party, manifest, log-book, instructions, or other papers relating to the course or destination of the ship, on the voyage upon which she was seized, were found on board of her when she was arrested, or were put in evidence with the proofs in *preparatorio*.

Joannes Wyllie, master, Thomas Carter, purser, and Charles Harris, second engineer, were examined by the prize commissioners in *preparatorio*, on the 17th and 19th of September, 1864.

The witnesses all concur in stating that they were present on the ship at the time of her capture, at about 7 o'clock in the evening of September 10, 1864, at sea, outside of Wilmington, North Carolina, for running the blockade of that port. The witnesses were all subjects of the Queen of Great Britain. The master testifies that the vessel was owned by Pour, Low & Co., of Wilmington, North Carolina, who appointed him to the command of her and delivered her to him in Wilmington; that the vessel's name, when built, was the Lord Clyde, but was afterwards changed to the A. D. Vance; that, when arrested, she had on board a cargo of cotton and turpentine; that it was taken on board in August, 1864; that the vessel sailed last from Bermuda to Wilmington, and thence back from Wilmington, September 9, 1864, for Bermuda; that she had been running between Naassau, Bermuda, and Wilmington, ever since he had been connected with her, for fully twelve months, and had carried the same kind of cargoes; that he believes some papers were thrown overboard from the ship while she was being chased and attempting to escape capture; that all the ship's company knew, while they were following the trade spoken of, that Wilmington was under blockade by the vessels of the United States; that the vessel had repeatedly entered and departed from Wilmington while that port was under blockade, while he was on board of her; that the cargo captured was of the growth and manufacture of the Confederate States, but he does not know that it was of North Carolina; and that, when this vessel was chased by the United States war ship she put on all the steam she could carry, and endeavored to es-

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282 bales of cotton, &c.

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cape capture. There is no contradiction made by the other witnesses of the material facts stated in the testimony of the master.

Upon the facts proved, the evidence is clear and satisfactory that the vessel seized and the cargo laden on board of her were guilty of a wilful violation of the blockade of the port of Wilmington, North Carolina, as charged in the libel; and the condemnation and forfeiture of the vessel, tackle, and cargo is adjudged accordingly.

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#### 282 BALES OF COTTON AND OTHER PROPERTY.

In this case, after the decree of this court condemning the property seized as prize had been reversed by the circuit court on appeal, and the property had been restored to the claimant, a warehouseman presented his bill of charges for services in regard to the property rendered under the official employment of the officers of the court. The court allowed the bill, the amount being a charge upon and payable out of the fund for defraying the expenses of suits in which the United States is a party or interested, under section 14 of the act of June 30, 1864, (13 U. S. Stat. at Large, 311.)

(Before BETTS, J., November 15, 1864.)

BETTS, J.: The above property having been captured as prize of war, and transmitted to this district, and here libelled, June 16, 1862, by the government, for adjudication, in eight distinct actions, and having been further proceeded against by regular course of practice to an interlocutory decree for the sale of the property, under which the marshal made public disposal thereof, July 26 thereafter, for the sum of \$66,447 90; and the claimant having, October 23 subsequently, on leave of the court, interposed his defences, by claim and answer, to the several actions, and the issues thereby formed between the parties having been brought to hearing on motion of the libellants, November 23, 1862, and this court having, on due consideration of the pleadings, proofs and allegations in the causes, rendered judgments and decrees in the said suits, January 5, 1863, condemning the whole of the said prize property arrested therein to forfeiture; and appeals having been thereafter taken from the decisions so made in this court, to the circuit court in this district, wherein such proceedings were had that, in July, 1864, orders and decrees were rendered and perfected of record, in the appellate court, reversing the decrees made by this court, upon the matters appealed from, and decreeing and adjudging a restoration to the claimant, in entirety, of the prize property condemned as forfeited by the decrees of this court, which judgments of the circuit court were thereupon executed and carried into full effect, by order of the said appellate court, bearing date July 12, 1864; thereupon, subsequent

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282 bales of cotton, &c.

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and consequent to the before-mentioned proceedings, Robert L. Ward and Walter S. Gove, composing the firm of Ward & Gove, warehousemen, transacting business in the city of New York, presented to this court, for adjustment and allowance by this court, with notice to, and consent of, the district attorney, their bill of charges for their services and expenditures in behalf of the libellants, in respect to the aforesaid property, which services had been theretofore rendered under the official employment of the officers of the court, during the pendency of the aforesaid actions therein, and between the 17th of April, 1862, and the 26th of July, 1862, and in pursuance of the authority of the second section of the act of Congress in relation to the administration of the law of prize, approved March 25, 1862, (12 U. S. Stat. at Large, 374,) praying the court to allow to them their costs and charges, and such relief and remedy for the recovery thereof as may be authorized by law. Copies of said application to the court, and of the evidence supporting their claim, were served, with notice of the motion, prior to its being made, upon the marshal and district attorney. No objection was interposed by either of those officers to the application. On the same day the court ordered a reference of the application, with the bill of charges and disbursements aforesaid, to be made to the prize commissioners, to examine the said bill of charges and proofs, and report to the court the sum justly and reasonably allowable thereupon. On the 4th of November instant, the said commissioners reported that "the account is just and true, and that the sum of \$7,619, being the whole amount thereof, is justly and reasonably due to said Ward & Gove thereupon." I accordingly, upon the aforesaid report and opinion, adjust and allow the said claim for services and expenses at the sum of \$7,619 to the said Ward & Gove. The final decree in this cause by the circuit court being for the restitution of the prize property seized, and there being no money subject to the order of this court in these causes, the costs aforesaid became a charge upon and payable out of the fund for defraying the expenses of suits in which the United States is a party or interested, according to the provisions of the 14th section of the act to regulate prize proceedings and for other purposes, approved June 30, 1864, (13 U. S. Stat. at Large, 311.)

Order accordingly.

## THE STEAMER ANNIE AND CARGO.

Vessel and cargo condemned for a violation of the blockade.

(Before BETTS, J., November 22, 1864.)

BETTS, J.: The steamer Annie was sent into this port for adjudication, as prize of war, on the 9th of November instant, in charge of a prize-master. She was captured at sea, October 31, 1864, off the coast of North Carolina, by the United States vessels-of-war Wilderness and Nippon, and was libelled, as lawful prize, within this district, and attached on due process of law issued upon the libel filed against her, and made returnable before the court on the 22d day of November, 1864. On that day the warrant of attachment was returned by the marshal, in open court, as served upon the vessel and cargo, and, on motion of the United States attorney, proclamation was duly made in court of her attachment and seizure thereon, and, no one appearing thereupon, on like motion, a judgment, by default of all parties interested in the vessel and cargo, was declared and rendered, and a final decree was pronounced against the same, in due course of procedure, according to the rules and practice of the court. Thereupon, the preparatory proofs taken in the cause, and other documentary evidence found upon the prize vessel, or pertinent to the suit, were produced before the court by the United States attorney, and submitted to its consideration, with a prayer for judgment of condemnation and forfeiture against the said vessel and cargo as lawful prize of war.

The testimony so produced and submitted to the court was direct and satisfactory to the effect following:—Albert Connop, examined *in preparatorio* before the prize commissioners, in this port, on the 14th day of November instant, testified that he was master in command of the ship, at the time of her seizure, on the 31st of October last; that she was captured off Cape Fear river, North Carolina, for having run the blockade of a confederate port; that she attempted to escape the capturing vessels, the Wilderness and the Nippon, which fired at her twenty five or thirty guns; that she was English built; that the voyage on which she was captured commenced at Halifax, and was to have terminated at Nassau; that the outward cargo consisted chiefly of provisions, and was discharged at Wilmington, North Carolina; that she had on board, when captured, 500 bales of cotton, 30 tons of tobacco, and 8 barrels of turpentine, all having been taken on

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The Annie.

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board at Wilmington, and the cotton and tobacco having been shipped by a brother of the owner of the vessel to him at Nassau; that the previous voyage was from Bermuda to Wilmington, and thence to Halifax; that on that voyage she carried into Wilmington a general cargo, the particulars of which he could not state, and brought out cotton and tobacco, which she delivered at Halifax; that she was owned by Alexander Collie, of London; that he does not know who were the owners of the cotton and tobacco; that he himself owned the turpentine; that bills of lading covering all of the cargo, except \$50,000 in specie, were thrown overboard during the chase of the prize; that he knew that Wilmington was under blockade when he entered and left that port; that the vessel had previously violated the blockade of Wilmington while under the command of the witness and her previous masters; that the specie was thrown overboard during the chase of the vessel, and that the vessel was built for Collie.

The first mate, Trehane Fickell, and the chief engineer, William Helme, of the prize vessel, were also examined *in preparatorio*, on the same day with the master, Connop. They substantially concur with him in the allegations that the vessel went into Wilmington, and came out of that port, in violation of the blockade, on the voyage in question, with full knowledge of its existence and enforcement, and with intent to evade it. It would be a useless surplusage of details to recapitulate the proofs at large.

The only paper evidence of the ownership of the prize ship, secured and brought into court from the capture, is an English certificate of registry, issued from the custom house at London, January 14, 1864, to Francis Muir. The testimony *in preparatorio* proves that the vessel was under British equipment as to officers, men, and flag, and was sailed in the interest of British subjects.

The result is unequivocal, upon the proofs, that the vessel was studiously and openly employed, at the time of her capture, in violating the blockade imposed by the United States government on enemy ports in the rebel States, and was captured in the act of evading the blockade of the port of Wilmington, North Carolina.

It is accordingly adjudged that the vessel and cargo be sentenced to condemnation and forfeiture for such offence, and that a decree to that effect be entered.

## THE STEAMER LADY STIRLING AND CARGO.

Vessel and cargo condemned for an attempt to violate the blockade.

(Before BETTS, J., November, 1864.)

BETTS, J.: The above-named steamer was captured as prize, October 28, 1864, by the United States vessels of-war-Calypso and Eolus, on the Atlantic ocean, off Wilmington, North Carolina, and was reported to this district for adjudication. Such proceedings were thereupon taken in court, upon the libel filed against her, and the processes and acts authorized by the laws of prize and the rules and usages of prize practice, that judgment final, on default of all appearance or defence in respect to the vessel, tackle, and cargo, was rendered against the same, as prize of war.

A large mass of desultory papers were taken from the prize vessel, mostly relating to other voyages and ships, and brought before the court through the prize commissioner's office, together with the depositions collected by those officers under the interrogatories *in preparatorio* in this suit. But no document relating to the ownership, voyage, or employment of the vessel, at the time of her arrest, was produced in court, the proof being clear that all papers of that kind were thrown overboard and destroyed by the master during the chase of the prize. The master, the first mate, and the chief engineer of the ship on the voyage in the prosecution of which she was captured, were carefully examined upon the standing interrogatories, and I think they have entitled themselves to the credit of having, in their testimony, given an unreserved and uncolored representation of the facts attendant upon the adventure she was endeavoring to carry out when she was arrested.

The master, Donald Cruikshank, was appointed at London, in August, 1864, master of the steamer Lady Stirling, then being built and fitted out by Thomas Sterling Begbie, residing there, on a contemplated voyage from London to Halifax, destined to Nassau, N. P., by the way of Wilmington, North Carolina. The owner of the Lady Stirling, her master and crew, all well knew, at the time, of the existence of the war, and of the efficient blockade of the port of Wilmington, North Carolina, and that the present voyage was specially destined to evade that blockade. The master proves these facts by his testimony, and the records of this court show that the same master had been, two years previously to the commission of the offence now charged, in command of another large English merchant vessel, purposely fitted out

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The Sybil.

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and employed with his knowledge and agency, to evade the blockade of the rebel ports, and which was captured and condemned for actually violating the blockade of the port of Charleston, South Carolina.

This case does not require further comment, in justification of a judgment condemning the vessel and cargo as lawful prize.

Decree accordingly.

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THE SCHOONER SYBIL AND CARGO.

Vessel and cargo acquitted, with costs, there having been no probable cause for their seizure.

(Before BETTS, J., December, 1864.)

BETTS, J.: The above vessel and cargo were captured at sea, in the Gulf Stream, in longitude about 76° 52' west, latitude 33° 18' north, by the United States vessel-of-war Iosco, as prize of war, November 20, 1864, and sent to this port, in charge of a prize-master, for adjudication. A libel was here filed in this suit, December 1, and an attachment issued thereon, returnable on the 20th of the same month, and such proceedings were taken in the cause that, on the 7th of December instant, William Stewart, of Liverpool, appeared therein by his agent and attorney, Oliver K. King, and filed his claim and answer to the aforesaid libel, averring, in effect, the capture of the said vessel and her cargo to have been without lawful authority and wrongful, and attaching his test oath to that claim, demanding the discharge of the vessel from seizure in this action, with damages to the claimant because of her arrest. On the same day, Alfred T. Conklin, of the city of New York, appeared and filed his separate answer and claim in the cause, alleging that he is the consignee and owner of 20 bales of cotton, part of the cargo of said vessel seized as prize. His test oath is annexed to the claim and answer, declaring that he is solely interested in the aforesaid cotton, saving the interest which may appertain to Foulke & Wilkes, who are the shippers of it, and are residents of Matamoras, Mexico, and that the vessel was bound from Matamoras to New York. On the same day, Godfrey Knoop, of the city of New York, consignee and agent for the owners of 284 bales of cotton, part of the cargo of said schooner seized in this suit, filed a claim and answer therefor, attaching his test oath thereto, alleging that the said bales of cotton were (in designated parts) the property of Messrs. De Jersey & Co., residents of Manchester, in England, and of Messrs. Foulke & Wilkes, residents of Matamoras, in Mexico; and the answer and claim proceeds to deny that the said cotton was lawfully captured



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The Sybil.

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as prize, as alleged in the libel filed in this cause, or was subject to capture as prize, and charges that the claimants are entitled to damages for the seizure to which it has been subjected by such unlawful arrest. None of the answers or claims aver the port of departure or destination of the prize vessel or cargo, otherwise than as it is stated incidentally, in the claims filed, that the cargo of cotton was shipped from Matamoras, in a British ship, bound to New York.

The testimony *in preparatorio*, in the cause, was taken before the prize commissioners, December 2 and 3, and the case, with all the proofs, was submitted to the court for decision on the 7th of December instant, without oral argument, or written briefs or points furnished by counsel on either side, and such submission was accepted by the court, on the understanding that the cause stood defaulted on the minutes, and that the only point for consideration under the submission was, whether the facts in evidence supplied probable cause supporting the default supposed to have been incurred by the claimants. The counsel for all parties were importunate that the case might be disposed of without delay, to save the accumulation of costs and damages, and, as the deposition of the master intimated that the vessel was seized off Wilmington, North Carolina, as he supposed, under suspicion that the cargo on board had come from blockaded States, and as I observed discord in the testimony of two others of the witnesses as to the location of the Sybil adjacent to the Carolina shores at the time of her arrest, I regarded the course taken by the claimants in forbearing to contest the case upon the proofs as an acquiescence in the justness of the judgment upon *nil dicit*. The district attorney and the proctors for the claimants now apprising the court that such view was a misapprehension, and that the submission of the cause, with all the papers, was to be regarded by the court as intended by the parties to have the effect of placing the case in the same situation as if it had been formally contested, I immediately reopened the order, and proceeded to examine the case in the light of one duly and seriously controverted upon all the issues of law and fact propounded by the pleadings and proofs.

The vessel was American built, her name being the Eagle, and, as appears by her certificate of British registry executed at Nassau, N. P., April 28, 1863, she was there transferred to William Stewart, of Liverpool, England, by the acting registrar at Nassau, and was then named the Sybil. A certificate was indorsed on the registry, at the British consulate in New York, April 7, 1864, that Robert H. Ramsay was that day appointed master, in the room of William E.

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The Sybil.

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Askins. The present master was appointed to the command of the Sybil by O. K. King & Co., merchants, of New York, for the voyage upon which she was captured. Portions of the cotton laden on board belonged to that firm. The vessel sailed under the British flag, and had no other on board of her. The crew captured with the vessel were mostly shipped at New York. Two were shipped for the return voyage on the Rio Grande. The outward voyage was with a miscellaneous cargo from New York to Matamoras, and the return cargo, which was captured, was laden at Matamoras, destined to New York. There is no evidence given in the case showing that the cargo seized as prize consisted of articles contraband of war, or had evaded, or attempted to evade, a legal blockade, or was the property of the public enemy. The same course of trade had been followed by the vessel in voyages immediately preceding the one upon which she was arrested in this action—departing from the port of New York, with a lawful cargo, destined to Matamoras, Mexico, and returning, bound to New York, from Matamoras, or Bagdad, the discharge port in Mexico. In practice, the cotton was sent on board the vessel in lighters, to her anchorage at Bagdad, her place of lading and discharge in Mexican waters, at the mouth of the Rio Grande river. The vessel had proceeded directly to that place from New York, and was on her return voyage to New York, with no other papers or vouchers than the regular clearances given at her ports of departure at each commencement of her voyage, the manifests, bills of lading, &c. Her cargo, shipped at Matamoras, was exclusively cotton, and there is no proof that any portion of it is enemy property. The proof is, that the prize had not stopped at any port, after leaving the mouth of the river Rio Grande, until she was captured on her return voyage. The cotton was carried on freight. There is no other proof of its actual ownership than the bills of lading accompanying its consignment. The house of Foulke & Wilkes shipped the cargo from Matamoras, and were apparently natives of Germany.

The prize vessel had on board, when arrested, various letters addressed to individuals. They were not asked for from her by the captors, and the master of the captured ship testifies that he did not offer them to the captors, thinking that, as they in no way related to the vessel or her cargo, but were merely the correspondence of individuals from other vessels lying near the Sybil in Mexico, and intrusted to her for conveyance to their families or friends, they did not belong to her.

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The Mary.

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The voyage of the Sybil, previous to her last one, was from New York to Matamoras, with an assorted cargo of flour, sugar, corn, soap, raisins, hardware, &c. Her crew consisted of eight men—the master, two mates, and five seamen, all shipped at New York, and most of them residents there. The voyage was from New York to Matamoras, and back to New York. She did not touch at any port, on her return voyage to New York, except Hampton Roads, where she was taken after her capture as prize. She was seized about ten o'clock in the morning, in the Gulf Stream, a hundred miles or more off the coast of South or North Carolina. She was entering no port when arrested. She was steering for New York, and did not alter her course, or take any notice of the Iosco, when pursued by her, till she came alongside. She was sailing under English colors, and had no others on board. Every witness examined *in preparatorio* from the ship's company testifies with great apparent fairness as to the good conduct of the vessel on her voyage, and no testimony is submitted to the notice of the court impeaching the integrity of the whole course of the voyage, except what has been before alluded to as affording plausible ground of distrust—her running suspiciously near to blockaded ports. But I discern no legal cause for pronouncing that there is proof furnished amounting to probable cause for the seizure of the schooner because of her having evaded or attempted to violate the blockade.

There must be a decree of acquittal of the schooner and cargo, with costs.

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THE SCHOONER MARY AND CARGO.

Vessel and cargo condemned for an attempt to violate the blockade.

(Before BETTS, J., January 17, 1865.)

BETTS, J.: The above-named vessel, laden with a cargo consisting of cotton, tobacco, and spirits of turpentine, was captured, as prize of war, by the ship-of-war Mackinaw, Commander Beaumont, of the United States navy, on the 3d day of December, 1864, on the Atlantic ocean, in latitude 32° 11' north, longitude 78° 14' west, and was sent into this port for adjudication. On the 22d day of December thereafter, the said prize vessel and cargo were seized and attached by the marshal, upon due process of law, and on the 10th of January, 1865, such attachment was by him returned in open court, and filed therein, upon which arrest and attachment due proclamation was made in court, and defaults were ordered and declared by the court, upon the

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The Mary.

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motion of the United States attorney. The pleadings and proofs in the case, after such default was taken, and judgment thereupon was rendered by the court, were submitted to the consideration of the court by the United States attorney, and judgment final was moved thereon, for condemnation and forfeiture of the said vessel and cargo.

No paper documents proving the ownership of the vessel were discovered on board the prize. Her master testifies, on his examination *in preparatorio*, that he believes she belonged to a man residing in Nassau, N. P., named Ferguson; that she sailed under English colors, and had no other on board; that she was captured for attempting to run the blockade imposed and maintained by the United States government against ports of the enemy; that he was appointed to her command in Charleston, by an agent of the owner, and took possession of her at Dewey's outlet, fifteen miles from Charleston; that he shipped all the crew but the mate and one man, at Charleston, November 22, 1864; that he believes the vessel was built in Nassau; that the voyage on which she was captured began at Charleston, and was to have ended in Nassau; that her last clearing port previous to her capture was Charleston; that he has no bills of lading or other papers in his possession in relation to the vessel or cargo, and saw none signed, and does not know how many were signed; that the vessel was captured December 3, 1864, off the coast of Charleston, in the Gulf Stream; that he knew of the war, and of the blockade of Charleston, when he sailed; that he was directed to throw overboard papers, if his vessel became exposed to capture; that he threw overboard papers in envelopes, the contents of which he did not know, on the appearance of a vessel previously to the appearance of the one making the capture; that he supposes his vessel ran the blockade of Charleston in going into that port; and that she sailed from Dewey's inlet for Charleston, December 1st, and, on being sighted and approached by the Mackinaw, surrendered herself immediately to that vessel.

Francis Hertz, the only witness on board of the prize vessel at the time of her capture, who was examined *in preparatorio*, gives substantially the same testimony as to the facts and circumstances of the voyage and the seizure of the prize.

The result of the proofs is clear and satisfactory that the vessel and cargo were designedly employed, when arrested, in violation of the lawful blockade of the port of Charleston, South Carolina.

A decree of condemnation and forfeiture is accordingly pronounced against the vessel and cargo.

## THE STEAMER PETERHOFF AND CARGO.

An appeal to the Supreme Court from the decree of this court in a prize cause removes the cause from this court, and places the prize property exclusively under the control of the appellate tribunal.

Pending such an appeal, this court refused to order the costs of the prize commissioner to be paid out of the funds in this case.

The distinction stated between the effects of a capture of property on land by a belligerent and of a capture of prize property at sea.

In the former case the title passes as soon as the capture is complete. In the latter the right of property remains unchanged until a final decree of condemnation by the courts of the country of the captors.

(Before BETTS, J., January, 1865.)

BETTS, J.: This suit was terminated in the district court on the last day of July term, 1863, by the condemnation as prize of the steamship and cargo. A final decree of forfeiture was entered against the vessel and cargo on the 1st of August thereafter, and on the 8th day of the same month the cause was removed, by appeal, to the Supreme Court of the United States, pursuant to the provisions of the act of Congress "to regulate proceedings in prize cases," approved March 3, 1863. (12 U. S. Stat. at Large, 759, §§ 7 and 8.) The cause was thereupon removed, by such appeal, to the Supreme Court, where it is now pending, awaiting, on the docket of the court, its regular course of hearing and final determination.

The removal of the cause from the district court necessarily takes from that court all authority over the subject-matters involved in the suit, and places them exclusively under the control of the paramount tribunal. The latter body alone has capacity to change the position or use of the *res*, while it is under contestation. In matters of prize held for adjudication, the tenure of the property seized is eminently qualified, provisional and destitute of absolute ownership. The captors, by the universal rule of the modern law of civilized nations, became only keepers of the arrested property, for the purpose of submitting it to judicial inquiry and judgment; the question of its confiscability for violation of the laws of war preceding and overriding all other questions of title or possession by the captors. It would constitute an undeniable outrage on those laws for the government of the United States, through any of its departments, executive, judicial, or military, to appropriate this prize or its proceeds, *mero motu*, without the preliminary of a legal scrutiny and condemnation, prosecuted in due form of legal procedure. The distinction between the capture of property by a belligerent during war waged on land, and a prize seizure, is as

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The Peterhoff.

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definitively marked in consequence and effect, as if the two had no common foundation of authority. (1 Kent's Com., 101, 102, note 6; Halleck's International Law, ch. 30, §§ 1, 4.) When property is captured on land by a belligerent, the title passes and is vested so soon as the capture is complete, and the property then belongs absolutely to the sovereign. In regard to a prize taken at sea, the right of property is not changed by the seizure alone. The prize remains in the hands of the captor, lawfully sequestered, under a species of trusteeship, awaiting a trial at law in the courts of the nation seizing it. While undergoing the processes of law necessary to ascertain its character, it is exempt from all power of the captors other than that of safe-keeping for the purposes of trial, and of determining its culpability. Until the decree of the prize court has transferred the title of the prize to the capturing power, the lawful proprietorship continues, with the original possessor, subject to no other use or appropriation by its occupant than that of safe-keeping under arrest, pending judicial proceedings seeking its forfeiture. Manifestly, in that *status* of the property, it cannot be lawfully divested of its condition of pledge, so long as the question of its lawful ownership is undetermined and rests under judicial advisement. These considerations are irrefragable, in respect to the functions of a court of *dernier resort* within whose cognizance the property may be placed; and more especially there is no shadow of authority existing in a tribunal from whose jurisdiction a subject of litigation is carried by appeal to a superior one, to recur to and exercise a renewed power over the subject-matter, after it has been transferred and submitted to the exclusive judgment of the ultimate tribunal.

It is within the competency of the Supreme Court, on the appeal in this cause, to decree the suit null and void; to order a new trial; to deny the recovery of costs, or to adjudge, at its discretion, any modification of the forfeiture pronounced against the prize by the district court, which the court of last resort may regard as equitable and just. The inferior court cannot lawfully intercept that corrective authority of the superior court, and prevent, by otherwise disposing of the *res* itself, while the appellate court may be in the act of rectifying the injury inflicted on the appealing party, that order of remedy which is most appropriate and desirable to the aggrieved suitor.

There is no effective judgment against the prize property or its proceeds remaining on the records of the district court. In principle, its orders to devote the proceeds of the captured property to the payment

of the costs and expenses of the suit, while the cause remains within the control of the Supreme Court, for final decision, can be no more appropriate and available than directions from it to make full distribution of the proceeds of the prize among the captors, together with costs.

It seems to me a misapprehension of the case of *The Collector* (6 Wheat., 194,) to regard it as laying down the doctrine, that, after an appeal to the Supreme Court, the funds connected with the cause still remain subject to the order and disposal of the inferior court. On the contrary, the opposite conclusion appears to be plainly stated. The inferior court remains the custodian of the proceeds in the cause under litigation while it is pending in the Supreme Court, but the inferior court is expressly inhibited from making any order respecting the property, whether it has been sold and the proceeds paid into court, or whether it remains specifically, or its proceeds remain in the hands of the marshal. The property or fund in this suit is undoubtedly in the keeping or charge of the district court, or of the sub-treasury, as its actual depository, but the lawful control of it belongs to the Supreme Court, in all particulars.

These principles will preclude my granting the motion of the counsel on the part of the prize commissioner, for an order directing the payment of the costs taxed in his favor in this case out of the funds deposited in charge of this court, and it is, accordingly, not necessary to discuss the further question presented, and much urged, respecting the right of the commissioner to have those costs declared to be payable out of the proceeds in the cause in court, or, in case of the deficiency of that fund, out of the judiciary fund in the treasury. It is understood that that question is to come before the court in other cases, now on appeal from this court to the Supreme Court, in which a decision upon the point may become practically important, and not be merely speculative and inactive. The consideration of the question may, I think, more appropriately abide an occasion which shall demand its determination.

I am by no means prepared to accept the qualified provision in the 13th section of the prize act of June 30, 1864, (13 U. S. Stat. at Large, 311,) that the district court, notwithstanding the appeal to the Supreme Court, "may still proceed to make a decree of distribution, so far as to determine what share of the prize shall go to the captors, and what vessels are entitled to participate therein," as giving authority to the district court to pay out of its registry or charge the moneys or

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The Charlotte.

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fund under appeal in the Supreme Court. I am inclined rather to regard it as a strongly implied inhibition to the district court against intermeddling in any way with the actual disposal of the funds left in its charge, except in execution of positive directions of the Supreme Court.

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## THE STEAMER CHARLOTTE AND CARGO.

Vessel and cargo condemned for a violation of the blockade.

(Before BETTS, J., February, 1865.)

BETTS, J.: The above vessel and cargo were captured, as prize of war, by a squadron of United States vessels-of-war, January 20, 1865, in Cape Fear river, off Smithville, North Carolina, and were brought into this port for adjudication. They were here arrested by the marshal, January 28, 1865, under process of monition and attachment, returnable in court February 14. Due notice was given thereof by public proclamation made in open court on that day; and, no person appearing to answer to such attachment, monition, and proclamation, it was, on motion of the United States attorney, ordered by the court that an interlocutory judgment of condemnation by default be rendered against the said prize vessel and her cargo, pursuant to the course and practice of the court. The pleadings, the documentary proofs, and the depositions *in preparatorio*, were submitted by the United States attorney to the court, to ascertain and determine the legal liability of the prize to condemnation and forfeiture.

The vessel was of English build, and when arrested carried on board of her a British certificate of registry, issued at the custom-house in London, bearing date August 26, 1864, with a further certificate indorsed thereon, by the custom-house registrar at Halifax, November 17, 1864, that Thomas Edwin Cocker had then become master of the vessel. It thus appears *prima facie* upon the ship's title papers produced from her, that she was a neutral vessel, which had departed from her home port and was arrested in the mouth of a blockaded port. The prize-master who brought the captured vessel into this port received with her no other papers than the aforesaid registry, and reports that he does not know that she had any papers on board.

Thomas E. Cocker, the master of the prize vessel, George Turner, the second mate, and Alexander Crawford, the ship's engineer, were



examined *in preparatorio*, by the prize commissiouner, on the 2d day of February, 1865. The master testifies that he is a subject of the Queen of England; that he was present at the capture of the vessel on the 20th of January last, about 12 o'clock at night, at Smithville, in the Cape Fear river; that she was brought, immediately after her capture, to this port; that she carried English colors; that she also had a confederate flag, which was usually hoisted at the mast-head in going up Cape Fear river, when coming in; that the circumstances of the capture were, that the vessel was bound from Bermuda to Wilmington, North Carolina, and had passed the blockading squadron there, as she supposed, and ran right into Smithville, and was there intercepted and ordered to anchor by the United States squadron; that the capture was made, he supposes, by all four of the American vessels; that the owners were British subjects, resident in England; that he was appointed master at Halifax, by the owners in England, for the voyage; that there were no bills of lading for the cargo of the vessel, to his knowledge; that he signed none; that he knows of no papers on the vessel except the register; that all private papers on the ship were burned or destroyed on board as soon as it was discovered she was in the enemy's hands; that her cargo, amounting to about 150 tons burden, consisted of miscellaneous merchandise, composed principally of materials for wearing and military supplies; that the vessel had, under his command, made a previous voyage from Bermuda to Wilmington and back, bringing cotton out of Wilmington; that he supposes the cargo in this case belonged to the owners of the vessel; that he knew that Wilmington was held under blockade by the United States forces before he attempted to enter the port on this occasion; and that the vessel had previously entered the port of Wilmington, and come out while it was under blockade, and was making the attempt to violate the blockade again when captured.

The other two witnesses concur substantially in the evidence given by the master, with the exception that the first engineer states that a portion of the cargo which the prize had on board when captured was composed of goods contraband of war. It is unnecessary to repeat the evidence in full detail, as the evidence given by both of the witnesses fully supports the charge of violating the blockade by the prize in running into the port of Wilmington when arrested.

It is ordered and decreed that the vessel and cargo be condemned and forfeited for the cause in the libel alleged.

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The Stag.

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## THE STEAMER STAG AND CARGO.

Vessel and cargo condemned for a violation of the blockade.

(Before BETTS, J., February 23, 1865.)

BETTS, J.: This vessel was captured January 20, 1865, about simultaneously with the preceding vessel, the Charlotte, and upon the same cruising ground, and by part of the same United States war vessels, as prize of war, and was sent into this port for adjudication, where she was libelled and arrested by process of the court on the 28th day of January last. The same order of procedure was followed in this case as in the preceding one, and, in due course of practice, an interlocutory decree of default was rendered by the court against the vessel and cargo, February 14, 1865. It is needless to recapitulate the exact steps pursued.

No ship's papers were taken from the prize other than a register, executed at Wilmington, North Carolina, December 17, 1864, by the confederate custom-house, transferring the vessel, as one of British build, from John Fraser & Co., and stating that Richard H. Gale, a citizen of the Confederate States, and apparently a commissioned officer of the rebel navy, was her master; and two letters from the secretary of the navy of the Confederate States—one dated December 6, 1864, and one dated December 12, 1864, both addressed to the said Gale at Wilmington, and each recognizing him as commander of the Stag, in the service of the Confederate States; and a letter from William H. Peters, as agent of the navy department at Wilmington, North Carolina, dated December 12, 1864, to the said Gale, as captain of the Stag, directing him to take the ship directly to sea in the confederate service; and another letter of similar purport, from the same navy agent, dated at the navy department, Wilmington, December 16, 1864, reiterating to Captain Gale, in command of the vessel, to despatch her immediately, in the rebel service, to Bermuda.

The depositions *in preparatorio* of Stephen Brewster Coltman, first officer, Richard Bell, second officer, and Hardy Mermetstein, third officer of the Stag, were taken in the cause, before the prize commissioner in this district, on the 1st day of February, 1865, and were duly returned and filed in court. No other sworn proofs were presented in the case except the affidavit of the prize-master accompanying the delivery of the prize and her papers.

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The Blenheim.

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The vessel was captured by United States ships-of-war, about one o'clock a. m., on the 20th of January, 1865, off Smithville, North Carolina, while coming out of Wilmington in evasion of the blockade of that port. She had recently made two voyages between Bermuda and Wilmington, breaking the blockade of the latter port. She was equipped, commanded, and sailed as a British ship, and had on board both a British flag and a confederate flag, and wore the latter flag in rebel waters. The master of the vessel resides in the United States. He received his appointment to her at Wilmington, and took command of her there. The vessel and cargo were English property, and the crew, excepting the master, were Englishmen. All of the crew knew that Wilmington was under blockade, and that North Carolina was in a state of war with the United States. The statements of all the witnesses concur substantially in these facts, and there is nothing in their depositions calculated to detract from the credibility of the testimony against the prize. There is, accordingly, no ground to question the culpability of the ship and cargo, or that they are rightfully subject to condemnation and forfeiture.

Decree accordingly.

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THE STEAMER BLENHEIM AND CARGO.

Vessel and cargo condemned for a violation of the blockade.

(Before BETTS, J., February 23, 1865.)

BETTS, J.: This is another vessel captured by a squadron of the United States blockading fleet of ships-of-war on the Atlantic coast. On the 25th of January, 1865, the steamer Blenheim was seized, as prize of war, off the mouth of Cape Fear river, by the squadron under command of Rear-Admiral Porter, of the United States navy, and was sent into this port for adjudication. She was here arrested, February 4, 1865, under the process of the court, and due return thereof having been made in open court, with public proclamation, and no person intervening in the case, or claiming to appear or defend the said prize, the United States attorney moved and had accorded to him interlocutory judgment of default in the cause, according to law and the practice of the court, and submitted to the court the allegations and proofs brought into the cause, and prayed a final decree of condemnation and forfeiture of the prize aforesaid, pursuant to law and right.

Beatty Peshine Smith, a lieutenant in the United States navy, on the 7th of February, 1865, delivered, under oath, the papers taken

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The Blenheim

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from the Blenheim, when captured, to one of the prize commissioners at this port, consisting of a clearance from Nassau to St. John's, a list of port charges, a crew list, two bills of sale, a log-book, and a British register. By the first bill of sale, dated at Belfast, February 12, 1863, John J. McKee, of that place, purports to have conveyed, as agent of the Belfast Steamship Company, to William Fod and his assigns, sixty-four shares in the said ship Blenheim; and, by the second bill of sale, dated September 20, 1864, William Fod purports to have conveyed to Richard Eustace, of Penryn, sixty-four shares in the same ship. By a certificate of British registry, dated at Glasgow, September 23, 1864, the registrar of that port certifies that Richard Eustace is the master of the said ship, and holds sixty-four shares of the said ship. The crew list, connected with the papers, states only the names of the crew, their wages, and their places of birth, but does not give the voyage contracted for, nor the capacities in which they served on board the ship.

Examinations were taken *in preparatorio* before the prize commissioner, and certified to the court February 8, 1865. Richard Eustace, the master of the ship, Archibald Lang, the chief engineer, and James Henry Thomas, the chief steward, gave testimony upon the stated interrogatories propounded to them. The testimony supports clearly, and without contradiction, the allegations of the libel as to the time, place, and manner of the capture made of the vessel and cargo. The prize was under the British flag alone. She had also a confederate flag on board. She was owned by her master. The cargo was owned at Nassau. The crew were chiefly English subjects, and a majority sailed with the steamer from England. She was laden with a general cargo, provisions and wearing apparel. The cargo was taken on board at Nassau, cleared for St. John's, but was destined for Wilmington, North Carolina, notwithstanding the clearance. 'This voyage was the second attempt of the vessel to run into Wilmington. On her first voyage there she carried a general cargo, and returned with a cargo of cotton. The master and crew knew, on the first voyage to Wilmington, that the port was under blockade by the United States government. They did not know, until they got into Cape Fear river on the second voyage, that Fort Caswell was taken, and that the United States fleet were in the river. The vessel was captured on her second attempt to run the blockade. She sailed directly from Nassau for and to Wilmington. Her ship's company, at the time of the capture, knew of the existence of the war, and of the blockade of the port of Wil-

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*The Blenheim.*

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The vessel was captured by United States ships-of-war, about one o'clock a. m., on the 20th of January, 1865, off Smithville, North Carolina, while coming out of Wilmington in evasion of the blockade of that port. She had recently made two voyages between Bermuda and Wilmington, breaking the blockade of the latter port. She was equipped, commanded, and sailed as a British ship, and had on board both a British flag and a confederate flag, and wore the latter flag in rebel waters. The master of the vessel resides in the United States. He received his appointment to her at Wilmington, and took command of her there. The vessel and cargo were English property, and the crew, excepting the master, were Englishmen. All of the crew knew that Wilmington was under blockade, and that North Carolina was in a state of war with the United States. The statements of all the witnesses concur substantially in these facts, and there is nothing in their depositions calculated to detract from the credibility of the testimony against the prize. There is, accordingly, no ground to question the culpability of the ship and cargo, or that they are rightfully subject to condemnation and forfeiture.

Decree accordingly.

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THE STEAMER BLENHEIM AND CARGO.

Vessel and cargo condemned for a violation of the blockade.

(Before BETTS, J., February 23, 1865.)

BETTS, J.: This is another vessel captured by a squadron of the United States blockading fleet of ships-of-war on the Atlantic coast. On the 25th of January, 1865, the steamer Blenheim was seized, as prize of war, off the mouth of Cape Fear river, by the squadron under command of Rear-Admiral Porter, of the United States navy, and was sent into this port for adjudication. She was here arrested, February 4, 1865, under the process of the court, and due return thereof having been made in open court, with public proclamation, and no person intervening in the case, or claiming to appear or defend the said prize, the United States attorney moved and had accorded to him interlocutory judgment of default in the cause, according to law and the practice of the court, and submitted to the court the allegations and proofs brought into the cause, and prayed a final decree of condemnation and forfeiture of the prize aforesaid, pursuant to law and right.

Beatty Peshine Smith, a lieutenant in the United States navy, on the 7th of February, 1865, delivered, under oath, the papers taken

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The Blenheim

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from the Blenheim, when captured, to one of the prize commissioners at this port, consisting of a clearance from Nassau to St. John's, a list of port charges, a crew list, two bills of sale, a log-book, and a British register. By the first bill of sale, dated at Belfast, February 12, 1863, John J. McKee, of that place, purports to have conveyed, as agent of the Belfast Steamship Company, to William Fod and his assigns, sixty-four shares in the said ship Blenheim; and, by the second bill of sale, dated September 20, 1864, William Fod purports to have conveyed to Richard Eustace, of Penryn, sixty-four shares in the same ship. By a certificate of British registry, dated at Glasgow, September 23, 1864, the registrar of that port certifies that Richard Eustace is the master of the said ship, and holds sixty-four shares of the said ship. The crew list, connected with the papers, states only the names of the crew, their wages, and their places of birth, but does not give the voyage contracted for, nor the capacities in which they served on board the ship.

Examinations were taken *in preparatorio* before the prize commissioner, and certified to the court February 8, 1865. Richard Eustace, the master of the ship, Archibald Lang, the chief engineer, and James Henry Thomas, the chief steward, gave testimony upon the stated interrogatories propounded to them. The testimony supports clearly, and without contradiction, the allegations of the libel as to the time, place, and manner of the capture made of the vessel and cargo. The prize was under the British flag alone. She had also a confederate flag on board. She was owned by her master. The cargo was owned at Nassau. The crew were chiefly English subjects, and a majority sailed with the steamer from England. She was laden with a general cargo, provisions and wearing apparel. The cargo was taken on board at Nassau, cleared for St. John's, but was destined for Wilmington, North Carolina, notwithstanding the clearance. ' This voyage was the second attempt of the vessel to run into Wilmington. On her first voyage there she carried a general cargo, and returned with a cargo of cotton. The master and crew knew, on the first voyage to Wilmington, that the port was under blockade by the United States government. They did not know, until they got into Cape Fear river on the second voyage, that Fort Caswell was taken, and that the United States fleet were in the river. The vessel was captured on her second attempt to run the blockade. She sailed directly from Nassau for and to Wilmington. Her ship's company, at the time of the capture, knew of the existence of the war, and of the blockade of the port of Wil-

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*The Pevensy.*

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mington. All the evidence is direct and conclusively efficient, in demonstration of the culpable conduct of the vessel and cargo on the voyage, and of their liability to conviction on the prosecution against them.

It is, accordingly, ordered, that a decree of condemnation and forfeiture be pronounced against the vessel and cargo.

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THE STEAMER PEVENSEY AND CARGO.

The vessel having been chased at sea while attempting to break the blockade and driven on shore in the enemy's territory and captured, with her cargo, and wrecked after capture, a part of her cargo having been brought into this district, was condemned as prize of war.

(Before BETTS, J., June 10, 1865.)

BETTS, J.: This case was submitted to the court upon the pleadings and proofs, by the district attorney, after considerable delay in endeavoring to collect fuller proofs, which had been much dispersed, owing to the circumstances following the capture. The rapid change of military forces and events on the spot, and the closing operations of the war, leaving small hopes that a more perfect command of the particulars of the prize may come again to the use of the government, probably demands that the case be disposed of without further procrastination.

On the 9th of June, 1864, the steamer Pevensy, on the Atlantic ocean, off Beaufort, North Carolina, was chased at sea while making the attempt to enter the port of Wilmington, then being in a state of blockade, driven on shore, and captured, as prize of war, by the United States supply steamer Newbern, together with the goods, wares, and merchandises laden therein. The said prize vessel was then and there wrecked, after capture, and a portion of her lading was brought to this port for adjudication. Thereupon, due proceedings were taken on behalf of the United States, in the prize court within this district, and process of monition and attachment was regularly sued out, August 13, 1864, and on such seizure and attachment of the property captured, and upon and after the return filed, and proclamation duly made by the marshal upon the aforesaid process, judgment by default thereon was duly entered in open court; and on motion subsequently made in court, by the district attorney, in June term, 1865, conformably to the due course of procedure of the court in such cases established, final judgment of condemnation and forfeiture of the said property so seized as prize of war is now rendered by the court.

## THE BRIG SARAH M. NEWHALL AND CARGO.

Vessel and cargo released and restored to the claimants.

(Before BETTS, J., July 24, 1865.)

BETTS, J.: The above vessel and cargo were libelled in this court June 5, 1865. The claimants on the record filed separate answers to the libel by different proctors, June 13 thereafter. The libel does not specify any belligerent acts committed by the vessel. The only averment is that "the goods, wares, and merchandise laden in the vessel were captured, as lawful prize, on or about the 23d day of May, 1865, in Tybee sound, Georgia, at the entrance of the Savannah river, Georgia, by the United States steamer Azalea."

The vessel and cargo seem to be owned in Nova Scotia. The cargo was shipped from various islands in the West Indies, and the consignment appears to have been generally through the port of New York to its general destination in Nova Scotia. It is alleged, in the test oaths to the answers, and in replies to interrogatories *in preparatorio*, that the vessel turned from her course on the passage to New York, into the port of Savannah to obtain fresh water, the vessel being in distress for want of it. Savannah had then come into the military possession of the United States, and it is not made to appear that the original blockade of the port of Savannah was continued after its capture and occupation by the United States. The vessel and cargo having been sent into this port, after capture, for adjudication, and the issue being perfected upon pleadings, the counsel for the claimants heretofore called upon the libellants to proceed to the hearing of the cause. But the United States attorney having, up to this term, delayed and declined to put the cause on trial in court according to the usual course of procedure in prize causes, and the proctors for the claimants now, at this term, in open court, praying that judgment be rendered in favor of the defence, pronouncing the prize action to be virtually abandoned by the libellants in neglecting to seek a final decree in the case, or to voluntarily withdraw it from the court, and surrender the prize property held in arrest under the process of the court, it is considered by the court, that, as the libellants forbear to act, and thus tacitly decline to say anything in support of the action brought and yet formally pending in court, and thus intimate that they stand apprised of no legal cause upon which to ask the condemnation of the captured property, and as they ask no further action in court upon the



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**The Sarah M. Newhall.**

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cause, this suit no longer remains actively subsisting in court upon its minutes, and within the power of its processes, and that an appropriate decree be entered therein, directing the marshal to deliver up and restore to the claimants or their proctors the aforesaid brig Sarah M. Newhall and her cargo, arrested and held in custody for proceedings in this prize suit.

CASES IN PRIZE  
IN THE  
CIRCUIT COURT OF THE UNITED STATES  
FOR THE  
SOUTHERN DISTRICT OF NEW YORK.

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THE SCHOONER CRENSHAW AND CARGO.

In this case the cargo of the prize vessel, consisting of tobacco, was suffering damage from exposure to the weather and from confinement in the hold of the vessel, and the price of the article had increased since the capture. The cargo having been condemned in the district court, the claimants, after appealing to this court, applied to this court for the delivery of the cargo to them on the usual stipulation. The court denied this application, but appointed commissioners to appraise the cargo, and ordered it to be sold and the proceeds to be brought into court.

(Before NELSON, J., November 18, 1861.)

NELSON, J.: This is a motion, on behalf of J. & J. K. Caskie, claimants of one hundred and eighty hogsheads and forty-seven half hogsheads of tobacco, on board of the schooner Crenshaw, lying at the wharf of the Union stores, in the city of Brooklyn, for an order for the delivery of the tobacco to the claimants, upon their stipulation to account for the proceeds in case of a decree against them on the final hearing, or for such other order or relief in the premises as the court may see fit to grant.

The vessel and cargo were seized and libelled in the district court for an alleged attempt to violate the blockade of one of the ports of the State of Virginia. A decree was rendered in that court, condemning the vessel and part of the cargo, as lawful prize, including the tobacco in question; and the case is now pending in this court, on an appeal from that decree.

The ground upon which this motion is placed is, that the tobacco is suffering damage and deterioration in value from exposure to the weather, and also from confinement in the hold of the vessel; and that the claimants have been obliged to keep a person constantly employed, at their own expense, in guarding and taking care of it, so as to prevent, as far as possible, further injury and damage. The gov-

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The Hiawatha.

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ernment, the captors, object to the delivery of the property to the claimants on stipulation, but do not deny that the facts set forth furnish proper ground for an interlocutory order of sale, the proceeds to be brought into the registry of the court, to abide the event of the suit.

It further appears, upon the papers upon which the motion is founded, that the price of the article has greatly increased since the capture, and that it would be for the interest of all parties concerned that some disposition should be made of it by which a sale can take place in the present market.

As the property has been condemned, as lawful prize, in the court below, the appellate court would not, except in extreme and very special cases, deliver it to the claimants upon the usual stipulation. It might be otherwise, if the decree had been in their favor. But, being against them, an enhanced interest exists, in behalf of the captors, that the property, the subject of the litigation, should be preserved with all reasonable security, to abide the result.

I therefore direct an order of sale to be entered, and appoint Morris Franklin and Frederick W. Welchman, esquires, commissioners, to enter the vessel (now in the custody of the court, through its marshal) and examine and appraise the value of the 108 hogsheads and 47 half-hogsheads of tobacco, and order that, after such appraisal, a public sale of the same be made by the marshal, under the direction of the commissioners, and at such time and place as they shall direct, giving at least three days' notice of the sale, to be given in such papers as they shall designate, and that the proceeds of the sale be brought into this court, to be placed or invested by the clerk according to the directions of the court.

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THE BARK HIAWATHA AND CARGO.

In this case, after an affirmance by this court of the decree of the district court condemning the vessel and cargo, and the taking of an appeal to the supreme court by the claimants, this court, on the application of the prize commissioners, and on proof that the cargo, consisting of tobacco, was in a perishing condition, ordered it to be sold.

The provisions of the act of March 25, 1862, (12 U. S. Stat. at Large, 374,) in regard to the sale of prize property, *pendente lite*, commented on.

That act applies to proceedings in this court as well as in the district court.

The practice under that act prescribed and regulated.

(Before NELSON, J., May 5, 1862.)

NELSON, J.: The vessel and cargo were condemned in the district court as prize, upon proceedings instituted by the United States. An appeal was taken to this court from that decree, which was

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The Hiawatha.

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affirmed. Since then an appeal has been taken to the Supreme Court from the latter decree, and is now pending. The cargo consists chiefly of tobacco, manufactured and unmanufactured, which was laden on board the vessel at City Point, Virginia, in May, 1861. The capture occurred in the same month in Hampton Roads, and the vessel and cargo were brought into this port. The vessel, with most of the cargo, is lying at the Atlantic dock, in Brooklyn. According to the report of the prize commissioners, under date of April 14, 1862, supported by proof, the cargo is in a perishing condition. They, therefore, asked for an order of sale for the benefit of all concerned. A sale was ordered accordingly, and some steps were taken under the order, with a view to an appraisal of the cargo, preliminary to the sale. The proceedings were afterwards stayed, for the purpose of enabling the proctor and advocate for the claimants to make some suggestions to the court in respect to the order of sale; and those suggestions have been submitted for its consideration. It is not denied that the cargo is in a perishing condition, or that the interference of the court is required, with a view to its preservation pending the litigation. The value of the property involved is large, and the claimants are numerous, as the documentary proofs are said to show some thirty-three different bills of lading. No application has been made by any of the claimants for any interference with the cargo by the court, with a view to its preservation. The application is exclusively on the part of the government, and by the prize commissioners, acting for the benefit of all persons or parties concerned. I am satisfied, upon the proofs before me, that some immediate steps should be taken to preserve the subject-matter in dispute from loss, and that it will be for the interest of all parties that the cargo be sold.

The recent act of Congress, passed March 25, 1862, (12 U. S. Stat. at Large, 374,) provides (§ 1) that it shall be the duty of the prize commissioners "from time to time, pending the adjudication, to examine into the condition of said property, and report to the court if the same or any part thereof be perishing or perishable, or deteriorating in value; and if the same be so found by the court, upon said report or other evidence, the court may, thereupon, order an interlocutory sale thereof by the United States marshal, and the deposit of the gross proceeds of such sale in the registry of the court to abide the further order of the court, whether a claim to said property has

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The Hiawatha.

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or has not been interposed." I am inclined to think that this provision applies as well to proceedings in this court as in the court below. I do not suppose that it was intended to interfere with any of the usual modes employed in this court or in the court below for the disposition or preservation of the fund or subject matter of litigation pending the suit; but I think that the object was to provide for the case of a sale, which is one of the modes, when that one had been adopted by the court.

This power of the prize commissioners is, I believe, new, and it may be proper to submit some observations upon it. The power is, I think, joint, and requires the concurrence of both in the exercise of it. As matter of practice it would be proper for them to give to the district attorney, as representing the government, and also to the proctor for the claimants, notice of the application to the court for the sale, so as to afford an opportunity to these parties to support or oppose the order of sale. Either of them may still make an application to the court in respect to the condition of the *res*, notwithstanding this power of the commissioners. This power was obviously conferred upon the commissioners as an additional security for the preservation of the property, and for abundant caution. The sale is, when ordered, to be made by the marshal; but, as matter of practice, should be made under the superintendence and direction of the commissioners. They represent all parties in interest, and it is their duty to see that the property is not sacrificed at the sale. The relation they hold to the property is not unlike that of a private party in sales of this description. The marshal is to receive the purchase-moneys, make a proper return of the sales, and pay the moneys into the registry of the court. The act provides that the order of sale shall contain an order to pay the *gross proceeds* into the registry; and the second section enacts "that all reasonable and proper claims and charges for pilotage, towage, wharfage, storage, insurance, and other expenses incident to the bringing in and safe custody and sale of the property captured as prize shall be a charge upon the same, and, *having been audited and allowed by the court*, shall, in the event of a decree of condemnation or of restitution on payment of costs, be paid out of the proceeds of any sales of the property, final or interlocutory, in the custody of the court." The gross proceeds of the sale must be paid into the registry of the court, and, on the allowance of the charges, &c., by the court, they may be paid. It may be

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The Aigburth.—The Sarah Starr.

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proper to say in advance, that where these charges are fixed by law they will be strictly regulated accordingly; and, where they are not fixed by law, the allowance will in no case exceed the usual accustomed charge in similar cases arising out of navigation and trade. I suppose that the charges for pilotage, towage, wharfage, storage, and all other incidental necessary expenses, are either fixed by law or by custom and usage, or have some definite limit or regulation by the course of trade and business. The marshal having the possession and custody of the vessel and cargo, subject to the direction and control of the court, he will be held responsible for its due care; for placing and securing the vessel at a proper dock; and, when the cargo is ordered to be discharged, for selecting a fit and suitable warehouse for its stowage and custody. Where an appraisal of the goods is ordered to be made by the commissioners before a sale, he will discharge the cargo under their superintendence, so as to enable them to take a list of it, with a view to the appraisal, and he will also be enabled to take a list for his own benefit, with a view to the sale. I think that, in discharging the cargo, the parcels of each bill of lading should be separated, and be appraised and sold separately, so that each claimant may be advised of his distinct interest involved in the litigation.

I shall affirm the order of sale heretofore made; but the sale is to take place in the mode and manner more fully stated in this opinion. The stay of proceedings is discharged.

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THE SCHOONER AIGBURTH.—THE BRIG SARAH STARR.

Pending the appeals in these cases from decrees of condemnation, an order was made by this court, at the instance of the claimants, for bonding the vessels. They were appraised for that purpose, and the bonds were tendered, when the marshal intervened, and claimed payment of his fees and disbursements in the seizure and subsequent safe-keeping of the vessels, and also for wharfage, towage, &c., or at least that the claimants pay into court a sum of money to cover these fees and expenses; *held* that the claimants were, thus far, liable for nothing but the expenses of bonding the vessel.

Under the act of March 25, 1862, (12 U. S. Stat. at Large, 374,) the claimant is not responsible for the costs and expenses attending the seizure, detention, and safe custody of property seized as prize, unless there is a decree of condemnation, or of restitution on payment of costs.

All captures made by public armed vessels belong to the government and no title exists in the captors, except to their distributive shares of the proceeds after condemnation.

(Before NELSON, J., May 19, 1862.)

NELSON, J. : These two vessels were seized as prizes by the government, and were condemned in the court below, and are in this court on appeal. An order was heretofore made, at the instance of the claim-

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The Aigburth.—The Sarah Starr.

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ants, for bonding them. They were appraised for that purpose, the Aigburth at \$900, and the Sarah Starr at \$2,000, and the bonds were tendered. The marshal has intervened, and claims the payment of his fees and disbursements in the seizure and subsequent safe-keeping of the vessels, and also for wharfage, towage, &c.; or, at least, that the claimants pay into court a sum of money to cover these fees and expenses.

The first section of the act of March 25, 1862, (12 U. S. Stat. at Large, 374,) provides "that all reasonable and proper claims and charges for pilotage, towage, wharfage, storage, insurance, and other expenses incident to the bringing in and safe custody and sale of the property captured as prize, shall be a charge upon the same, and, having been audited and allowed by the court, shall, in *the event of a decree of condemnation, or of restitution on payment of costs*, be paid out of the proceeds," &c. The third section contains a similar provision in respect to another class of expenses. It will be seen, from the above provisions, that the claimant is not responsible for the costs and expenses attending the seizure, detention, and safe custody of the vessel seized by the government, unless there is a decree of condemnation or of restitution on payment of costs. And such would have been the rule in the absence of any statute regulation. The government is the libellant, instituting proceedings against the vessel, and, like any other party instituting a suit, is responsible for the expenses incurred in the progress of the litigation, with the right of being reimbursed in the event of success, namely, the condemnation of the vessel, or a decree of restitution to the claimant on terms, such as payment of the costs. The claimant acts on the defensive, and is not subject to any portion of the costs and expenses incurred by the proceedings of the libellant, except his own in the progress of the defence, till they are adjudged against him by the court in the final adjudication. If he is successful in resisting the seizure, and obtains a final decree in his favor, he is, as a general rule, entitled to all his costs and expenses against the adverse party; and, if the latter is a private party, to an execution for these costs and expenses. If the government be the adverse party, as no decree for costs can be rendered against it, an application must be made to the proper department of the government, and such application must be made by all officers, or other persons who may have incurred expenses, or been subject to charges, at the instance of the government, in the course of the proceedings. It is

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The Aigburth.—The Sarah Starr.

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true, that these costs and expenses are a charge upon the property seized, whether vessel or cargo, while it remains in the custody of the law; or, on its proceeds, in case of an interlocutory sale; or, on the bond, as representing the property, in case it is bonded; and this charge upon the *res* continues until the final adjudication of the case. If that is favorable to the libellant, they are paid out of the proceeds; if not, the property or proceeds are exempt, and are restored to the claimant. What these charges are, or may be, I am not now called upon to determine.

I have said that the government is the libellant, and is responsible for all lawful and proper expenses incurred in its behalf in conducting the proceedings. All captures made by public armed vessels belong to the government. By the laws of Congress, after the condemnation of prize property, a portion of the proceeds is distributed among the officers and crew of the capturing vessel in proportions depending upon the relative force of that vessel and of the captured vessel. Still, the whole property is proceeded against in behalf of the government. No title exists in the captors, except to the distributive share of the proceeds after condemnation; and, until then, the captors have no interest which the court can notice for any purpose.

An exception to the above views in respect to costs and expenses exists in cases where the claimant applies to the court for some disposition of the *res* which may involve expense, such as for an interlocutory sale of the property, or for bonding the same. In such cases the claimant must advance the legal and necessary expenses, in the first instance, subject to a proper adjustment between the parties by the court in the final adjudication.

Applying the principles above stated to the case before me, it is quite clear that the marshal's bill presented, which includes charges for his own services, and for wharfage, towage, &c., cannot be allowed. He must look to the government, the libellant for these expenses, or postpone his claim until the final adjudication, when, if that be against the claimant, it may be paid out of the proceeds; otherwise, not. The security taken for the vessel represents the proceeds, and is the equivalent for the property restored. The only charges thus far against the claimant are the expenses of bonding the vessel.

The above views may be taken as disposing of other cases which have been mentioned to the court in the course of the term.



## THE STEAMER SUNBEAM AND CARGO.

In this case the prize property was condemned in the district court, and a sale of it was ordered. The claimant appealed to this court from the decree of condemnation, and then applied to this court to stay the sale, which was in progress, on the ground that the appeal operated to remove the cause into this court, and thereby deprived the district court of jurisdiction to issue an execution, or to make a sale of the property under the decree of condemnation in that court. This court ordered the sale to be stayed, and all proceedings under the decree below to be set aside.

The 12th section of the act of July 17, 1862, (12 U. S. Stat. at Large, 608,) and the 4th section of the act of March 25, 1862, (*Id.*, 375,) considered.

There is nothing in either of these acts which changes the general rules of practice—that no sale can take place under a decree of condemnation in the district court, duly appealed from; that a decree thus appealed from is not a final decree; and that, after the appeal, the cause, with the *res*, is in this court, and subject to its jurisdiction alone.

The 1st section of the act of March 3, 1863, (12 U. S. Stat. at Large, 759,) respecting sales of prize property condemned, notwithstanding an appeal, relates solely to decrees of condemnation to be thereafter made.

(Before NELSON, J., May 19, 1863.)

NELSON, J.: This is a motion made by the advocates for the owners and claimants of the steamer Sunbeam and cargo to stay a sale of the property by the United States marshal which is advertised to be made. It appears, from the papers, that the vessel and cargo were condemned as prize in the district court on the 19th of January last, and that a *renditioni exponas* was ordered, which was issued accordingly, and under which the marshal is now proceeding to make the sale. An appeal from the decree below was taken to this court within the time prescribed by law, and duly perfected. It is claimed by the advocates for the claimants, that this appeal operates to remove the cause into the appellate court, and thereby deprives the district court of jurisdiction to issue an execution, or to make a sale of the property under the decree of condemnation in that court. That such is the effect of the appeal is admitted, unless the practice is changed by recent acts of Congress.

The first act referred to is the twelfth section of the act of July 17, 1862, (12 U. S. Stat. at Large, 608,) entitled "An act for the better government of the navy of the United States." That section provides, among other things, as follows: "And whenever a final decree of condemnation shall have been made, or any interlocutory sale has been ordered, the property shall be sold by the marshal, pursuant to the practice and proceedings in admiralty, and the gross proceeds of such sale shall be forthwith deposited with the assistant treasurer of the United States at or nearest to the place where such sale is made, and the money so deposited shall remain in the treasury of the United

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The Sunbeam.

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States until a final decree of distribution, or until a decree of restitution shall be made, and a certified copy thereof furnished, upon which the costs of court and the lawful charges and expenses shall be paid, and the balance distributed according to said decree: *Provided*, That the annual salaries of the district attorneys, prize commissioners, and marshals shall, in no cases, be so increased under the several acts for compensation in prize, so as to exceed in the aggregate the following sums, and any balance beyond the several sums shall be paid into the treasury, viz: district attorney, \$6,000; prize commissioners, \$3,000; marshals, \$6,000." I see nothing in the words of this provision that is either ambiguous or doubtful. The entire section, which is a long one, relates chiefly to the regulation of the sales of prize property by the marshal, under decrees of condemnation, or by interlocutory orders, and to the costs, charges, and disbursements of the several officers connected with these proceedings in the course of the litigation. The provision relating to decrees of condemnation, or to interlocutory orders of sale, is incidental to the main purpose of the section, to wit, the regulation of the sales, and of the costs, charges, and disbursements. It provides that in the case of a *final decree of condemnation*, or of an interlocutory order of sale, the property shall be sold by the marshal according to the usual practice in admiralty, and the gross proceeds be deposited with the assistant treasurer, and remain there until a *final decree of distribution, or until a decree of restitution*.

A reference to the fourth section of the act of March 25, 1862, (12 U. S. Stat. at Large, 375,) will help to explain the provision. That section provided that, in case of a final decree of condemnation, the property should be sold by the marshal, and the gross proceeds be deposited in court, and that thereupon the prize commissioners, under the direction of the court, should proceed to take the requisite evidence and report the same to the court, to the end that a *final decree* might be made determining what public ships were entitled to share in the prize, &c.; and it was made the duty of the clerk of the court to transmit to the treasury the moneys so deposited in court, together with a certified copy of the said decree, after deducting from said moneys the costs of court and the charges and expenses, as provided. Now, the twelfth section of the subsequent act of July 17, 1862, provides that the gross proceeds of the sale shall be deposited by the marshal with the assistant treasurer, and shall remain there until a final decree of distribution, or until a decree of restitution, and a certified copy is to be furnished to enable the government to make distribution among the

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The Sunbeam.

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captors. The act of March 25, 1862, and that of the 17th of July following, both of them, speak of a final decree of condemnation before the sale, and of a final decree of distribution after the sale.

I have heretofore had the fourth section of the act of March 25, 1862, before me for consideration, and then held, that no sale could take place under a decree of condemnation in the district court duly appealed from; that a decree thus appealed from was not a final decree, within the meaning of the act; and that, after the appeal, the cause, with the *res*, was in the appellate court, and subject to its jurisdiction alone. There is nothing in the 12th section of the act of July 17, creating any new rule in this respect. It is supposed that the words, "or until a decree of restitution," after the words "final decree of distribution," in the 12th section, are inconsistent with the idea that the term "final decree of condemnation," used in the section, means the ultimate decree in the cause. But the obvious answer is, that this phrase, in the connexion in which it is found, refers to the case where the property has been sold on an interlocutory order, and where the final decree is a decree of restitution. As the funds will be in the treasury, a certified copy will be as necessary in the case of restitution as in the case of condemnation; and both decrees must be final decrees. The first part of the clause provides for the case of a sale after the final decree of condemnation—the other, for the case where a sale has taken place before the final decree, and where by it restitution is ordered.

I think it quite clear that, under this act of July 17, 1862, as well as under the act of March 25, preceding, no execution can issue, nor any sale of the prize property be lawfully made, (except on an interlocutory order,) until after a final decree of condemnation, by which the case is finally disposed of. A decree regularly appealed from is not a final decree, in any sense of the term; and I must assume that the framers of the provision well understood the meaning of the terms used.

The first section of the act of March 3, 1863, (12 U. S. Stat. at Large, 759,) provides, "that whenever any prize property shall be condemned, in any district or circuit court, &c., it shall be the duty of the court to order a sale thereof, and no appeal shall operate to prevent the making or execution of such order." This provision of the act, as well from its terms as from the nature of the subject-matter to which it relates, and upon which it operates, is prospective. In all cases where appeals had already been taken from decrees of the dis-

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The Joseph H. Toone.

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trict court, the whole case had passed from its jurisdiction to the appellate court. The *res* was in that court, and subject to its jurisdiction. There was no longer any valid or operative decree in the court below; and any proceedings affecting the *res* must take place in the court above. This state of the case must, doubtless, have been well known to the framers of the law, and hence the operation given to the act is entirely prospective.

I am satisfied that the execution in this case, for the reasons above stated, furnishes no authority to the marshal to make a sale of the property in question, and, therefore, I shall, to prevent its sacrifice, order the sale to be stayed, and all proceedings, under the decree below, to be set aside.

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#### THE SCHOONER JOSEPH H. TOONE AND CARGO.

Decree of the district court condemning vessel and cargo for an attempt to violate the blockade affirmed.

(Before NELSON, J., July 17, 1863.)

NELSON, J.: This vessel was captured on the 1st of October, 1861, by the war steamer South Carolina, in the Gulf of Mexico, off Timbalier island and Baratavia bay, on the coast of Louisiana. She was of the burden of 145 tons, and was laden with arms, ammunition, coffee, &c., and on a voyage from Havana to Tampico, Mexico. The vessel belongs to Aymar, a British subject, doing business at New Orleans, where he has resided for the past eight years. He was on board at the time of the capture. The cargo belongs to Spanish subjects, and was shipped on board at Havana, ostensibly destined for Tampico.

The only question in the case is, whether or not the vessel was, at the time of the capture, attempting to enter the port of New Orleans, which was in a state of blockade. The owner, who was on board, and the master, knew of the blockade. The vessel, at the time she discovered the war steamer, was heading northwest, and immediately tacked to the southwest, and was chased some four hours before she was overtaken and captured. She was some six degrees, or over five hundred miles, north, out of her proper course for Tampico, and heading towards a pass that would lead to the Mississippi river and New Orleans. Tampico is some eight or nine hundred miles south of west from Havana. The attempted explanation of this departure from the

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The Elisabeth.

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usual course to Tampico, namely, head winds, and a defective barometer, is not satisfactory. Indeed it is admitted that the wind, at the time of the capture, was from the northeast. No one can look on the map without being struck with the insufficiency of the excuse for the position of the vessel in her extreme northern latitude, compared with her port of destination, and in the vicinity of one of the customary passes to New Orleans. I say nothing about the cargo on board. She had a right to carry it to Tampico. The difficulty in the case is, that the course of the vessel, from the commencement of the voyage until she was discovered by the South Carolina, was utterly inconsistent with an honest destination to that place, and was consistent with an intent to run the blockade of the port of New Orleans. I think that the intent is apparent, and that the vessel was in the act of carrying it into effect.

Decree below affirmed.

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THE STEAMER ELIZABETH AND CARGO.

Decree of the district court condemning vessel and cargo for an attempt to violate the blockade, affirmed.

(Before NELSON, J., July 17, 1863.)

NELSON, J. : This vessel was captured, on the 29th of May, 1862, off Charleston, South Carolina, some twenty miles west of the Gulf stream, about eight o'clock a. m., by the steamer Keystone State. She was laden with arms and munitions of war, partly at Havana and partly at Nassau, N. P., and cleared from the latter port for St. John's, N. B., on the 24th of May preceding her capture. Her heading was towards the land, off Charleston, when she first discovered the blockading vessel. She then changed her course to east by north. She had been out of the port of Nassau only four or five days when she was captured. She was what is called an auxiliary steamer, using both sails and steam. No satisfactory reason is given for the position of the vessel at the time of her capture; and the inference is irresistible, from the evidence, not in dispute or doubt, that her intention was to run the blockade of Charleston, and that she was in the act of doing so when she discovered the Keystone State, and changed her course.

Some irregularities were committed on the part of the captors, and in the proceedings on the part of the government, in the court below, which I should afford an opportunity to the claimant to correct, were

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The *Cheshire*.

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I not entirely satisfied, upon the facts which are undisputed, and could not be substantially varied by any further proof offered, that the voyage was in reality intended for the port of Charleston, and not for that of St. John's.

Decree below affirmed.

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THE SHIP CHESHIRE AND CARGO.

Decree of the district court, condemning vessel and cargo for an attempt to violate the blockade, affirmed.

Where the owner of a vessel and her master are aware of the existence of a blockade at the time the vessel sails on her voyage, and have no reason to believe that it has subsequently ceased, the vessel has no right to approach the blockaded port for the purpose of ascertaining whether the blockade is still in force.

(Before NELSON, J., July 17, 1863.)

NELSON, J.: This vessel was captured off the port of Savannah, Georgia, on the 6th of December, 1861, by the steamer *Augusta*, one of the blockading vessels. She was on a voyage from Liverpool to Nassau, N. P., with directions, from the shipper of the cargo and agent of the owner of the vessel and cargo, to call at the port of Savannah and inquire if the blockade had been removed. The vessel sailed from Liverpool on the 10th of October, 1861, with a cargo of coffee, salt, tin, blankets, &c. She was owned by Joseph Battersby, and the cargo was owned by him and his brother William, both of them merchants of Manchester, England, and British subjects. The firm had an agency at Savannah, Georgia, where they had carried on business several years. The vessel had been purchased from a house at Savannah, the previous winter, by J. Battersby, and carried a cargo from Liverpool to Savannah and back, leaving the port of Savannah in May, 1861. It is quite apparent, from the testimony in the case, that all parties concerned in the present shipment were aware of the blockade of the port of Savannah at the time the vessel left Liverpool, October 10, 1861; and, unless the right existed to call at the blockaded port and inquire there for the purpose of ascertaining if the blockade was still in force, the condemnation of the vessel and cargo is unavoidable.

I agree that, as no official notice of the blockade was given to England, the condemnation in this case must be upheld, if at all, on the footing of the violation of a blockade *de facto*, in which case the master may have been justified in making the inquiry at the port if the owners

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Fifty-two bales of cotton.

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and master were ignorant of its existence at the time the vessel sailed from Liverpool. This principle is, I think, well settled. But the difficulty lies in the fact that all the parties concerned were fully advised of the existence of the blockade, and no ground or reason is furnished for a belief that it had ceased. If the master, under the facts and circumstances of this case, could be justified in making the inquiry, he would be in any imaginable case. I lay aside the testimony of the boy, Thornton, as unworthy of credit, and see no ground for the condemnation of the vessel or cargo as enemy's property. But, within the case of the *Hiawatha*, in the Supreme Court, the decree below is correct, on the ground of an attempt to violate the blockade of the port of Savannah.

Decree below affirmed.

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FIFTY-TWO BALES OF COTTON.

Decree of the district court, condemning the property, reversed.

The property was captured on a flatboat fastened to a wharf in Texas, and belonged to a citizen and merchant of New York, who went to Texas before the war to collect debts due to him.

The cotton was the proceeds, and claimant used all diligence to collect his effects, with a view to leave the hostile country after the breaking out of the war.

(Before NELSON, J., July 17, 1863.)

NELSON, J.: This cotton was captured from on board a flatboat fastened to the wharf at the town of Lamar, at the head of Aransas bay, Texas. The flatboat was not captured, but a schooner, called the *Monte Christo*, lying in the same waters, undergoing repairs, and on board of which, as is claimed, it was intended to place the cotton, was captured. This vessel was afterwards burned, but her master was brought to New York, and has been examined *in preparatio*. The cotton belongs to a citizen and merchant of New York, who had gone to the south, just before the breaking out of the war, to make collection of debts, and was engaged, at the time, in gathering together the funds realized from these collections, with a view to make his way home. The cotton in question comprised a part of these funds. He was not a resident south, nor engaged in business there. The war found him there temporarily, for the purposes above stated. The property was not enemy's property, nor is it pretended that there was any intention to run the blockade. The court below and its officers seem to have been in some doubt whether the proceedings against the cotton were on the prize or the instance side of the court. It was

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The North Carolina and The Aigburth.

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not on board of the vessel captured, which was undergoing repairs, nor was it to be placed on board unless, after she was repaired, she should prove seaworthy; and, if it had been on board, there is no proof of any intent to run the blockade.

The only pretext for condemnation is, that the property in question was enemy's property, which I think is not sustained. It appears to me that the claimant used all diligence to collect his effects, with a view to leave the hostile country, after the breaking out of the war, and is brought fairly within the principle of international law that protects him.

Decree below reversed.

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THE SHIP NORTH CAROLINA AND CARGO.

Decree of the district court, condemning vessel and cargo as enemy property, affirmed.

(Before NELSON, J., July 17, 1863.)

NELSON, J.: This vessel was captured off Cape Henry, on the 14th of May, 1861, by the steamer Quaker City. Her owners were citizens and residents of the State of Virginia at the time. She has been condemned as enemy property.

Decree below affirmed.

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THE SCHOONER AIGBURTH AND CARGO.

Decree of the district court, condemning the vessel and cargo as enemy property, and acquitting the vessel on the charge of breaking the blockade, affirmed.

(Before NELSON, J., July 17, 1863.)

NELSON, J.: The vessel in this case was captured at sea, off the coast of Florida, near Fernandina, on the 31st of August, 1861, by the Jamestown, a vessel-of-war. The Aigburth was on a voyage from Matanzas, Cuba, to St. John's, N. B., with a cargo of molasses. She left the port of Newbern in July, with a cargo of rice, for Matanzas. At the time of her egress, the port was not actually blockaded.

The vessel and cargo belonged, at the time of capture, to C. Gravely, a British subject, but resident and doing business in Charleston, S. C. The court below condemned the vessel and cargo as enemy property, and acquitted the vessel on the charge of breaking the blockade.

I concur in that decree.



## THE SHIP ALLIANCE AND CARGO.

The examination of witnesses in a prize case should be confined to persons on board of the captured vessel at the time of the capture, unless upon special permission of the court first obtained.

In this case none of the crew on board at the time of the capture, eleven in number, were examined; but, instead, two seamen who had been discharged from the vessel before her capture were examined; and no explanation of the reason for this was given. This was a great irregularity, which cannot be overlooked or disregarded in a consideration of the proofs.

Vessel and cargo acquitted of a violation of, or of an attempt to violate the blockade.

Vessel held to be neutral property.

Further proof ordered as to the neutral ownership of the cargo; and further proof allowed as to the proprietary interests in the vessel, the vessel and cargo being claimed by the same party.

(Before NELSON, J., July 17, 1863.)

NELSON, J.: The Alliance was captured on the 2d of May, 1862, while at anchor at the dock of Morehead City, opposite Beaufort, North Carolina, by United States troops, and was subsequently delivered to Commander Lockwood. She is a vessel of over 600 tons burden, and was built in Portsmouth, Maine, some twelve or more years ago. She was owned by Razer and others, of Charleston, South Carolina, down to February, 1861, when she was purchased in Liverpool, by J. R. Armstrong and H. Gerard, British merchants of that city. S. De Forest, an American citizen, was master. He was appointed by the owner, at Liverpool, and then took possession of her. Her last voyage was from St. John's, N. B., to Beaufort, North Carolina. She left St. John's in August, 1861, with an assorted cargo, and arrived at Beaufort on the 22d of the same month. There were no blockading vessels at Beaufort when she entered, and none arrived till several days afterwards. Her cargo was there discharged, and another was put on board, consisting of resin, pitch, and spirits of turpentine. She had no arms or ammunition on board, on her voyage to Beaufort, nor any cargo contraband of war. She was laden with a full cargo about the 14th of September, and remained in port, awaiting the removal of the blockade, from that period until the 2d of May, 1862, when she was captured by the troops that took Fort Macon and the town of Beaufort. She was bound from Beaufort to Liverpool, with the cargo that was on board at the time of capture. The above is, I think, the fair weight of the proofs that are entitled to credit.

Some of the facts are sought to be impeached by the testimony of two of the seamen, Stevens and Thompson. One of them is an Italian, and unable to speak or understand English, and both of them were discharged from the Alliance while she was lying at Beaufort, one of them as early as February previous to the capture, and were not of the crew

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The Prince Leopold.

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or on board of the vessel at the time of the capture. Why these witnesses were selected and examined *in preparatorio*, in place of some of the crew on board at the time of the capture, who were in number eleven, has not been explained. It was a great irregularity, which cannot be overlooked or disregarded in a consideration of the proofs. The examination should have been confined to persons on board at the time of the capture, unless upon special permission of the court first obtained.

I am satisfied, upon a very full consideration of the proofs, that there was no actual blockade of the port of Beaufort at the time of the entry therein of the Alliance; and further, that no intention existed on the part of the master, after such entry, and the establishment of the blockade, to break it, and that no act was done by him with such intent, while the vessel remained in the harbor previous to her capture. I think, also, that the vessel belonged to British owners *bona fide*, and even before the breaking out of hostilities. But I am not entirely satisfied that the goods on board of the vessel at the time of capture were the property of British owners, as claimed. Upon this ground, I shall send the case for further proofs on this point, to be presented at the next term of this court; and as the claim of property in the vessel and the cargo is made in behalf of the same party, or one of the same parties, further proofs may be taken as to the proprietary interest in the vessel, as well as the cargo, by either or both of the parties to the suit.

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THE SCHOONER PRINCE LEOPOLD AND CARGO.

Decree of the district court, condemning vessel and cargo as enemy property, and acquitting them on the charge of violating the blockade, affirmed.

(Before NELSON, J., July 17, 1863.)

NELSON, J.: This vessel was captured in the port of New York, on the 21st of August, 1861, by government officers. She was laden at the port of Newbern, North Carolina, with spirits of turpentine, and left that port on the 23d of July, 1861. There was no actual blockade of Newbern at the time. The vessel belongs to H. A. McLeod, a British subject, but resident in Charleston, South Carolina, at the time of capture, and the cargo to A. Wade, a resident of Newbern, and a citizen of North Carolina. The vessel and cargo were condemned as enemy property in the court below, and acquitted on the charge of breaking the blockade.

Upon the doctrine of the cases recently decided in the Supreme Court of the United States, the decree must be affirmed.

## THE STEAMER ELLA WARLEY AND CARGO.

Decree of the district court, condemning vessel and cargo for an attempt to violate the blockade, affirmed.

Mutilation of the log-book and destruction of papers.

False destination on the papers of the vessel.

(Before NELSON, J., July 17, 1863.)

NELSON, J.: This vessel was captured about one hundred miles north of the island of Abaco, one of the Bahamas, east of the Gulf Stream, on the 24th of April, 1862, by the war steamer Santiago de Cuba. The cargo consisted principally of arms, Enfield rifles, Austrian rifled muskets, and other muskets, lead, saltpetre, &c. The vessel belongs to E. Adderly, of Nassau, a British subject, and, probably, the cargo also, although this is left in some uncertainty. The vessel had been recently purchased from a citizen of Charleston, South Carolina, after running the blockade of Charleston two or three times, between that city and Nassau, N. P. She left the latter place in ballast, for Havana, where she took in a part of her cargo. She then returned to Nassau, completed it there, and then sailed, according to her papers, for St. John's, N. B., and was captured some twenty-four hours out, as above stated.

The master, A. G. Swasey, states that the vessel was cleared at Nassau for St. John's, and that the cargo was consigned to W. B. Wright, of that place, in the same way that previous cargoes had been consigned, when he ran the blockade of the port of Charleston.

R. W. Lockwood, the pilot, says that he cannot say where the vessel was bound after leaving Nassau, and that he does not know where she was bound. He further says: "I never heard nor asked any question as to where we were bound. The master, to the best of my knowledge, was the only one who knew where we were bound." He also says: "I think the last voyage began at Nassau, N. P., but I don't know where it was to have ended." And again: "At the time we were taken we were steering our course about north half west, in order to get into the Gulf Stream, and we were not steering to any particular place." Again: "I don't know whether or not we were bound to that port, (Charleston, South Carolina,) on the voyage during which we were captured."

It is remarkable that the pilot should be thus in doubt and uncertainty as to the course of the vessel in her voyage from Nassau, and as to her destination. If her course and destination were for St. John's,

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The Pioneer and The Gondar.

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he was, of all persons on board the vessel, the most likely to have been advised of it. The uncertainty leads to strong suspicion as to the ostensible voyage. The log-book was mutilated after the capture, or about that time, together with other papers. It is urged, that the only part destroyed was that which related to the former voyages in violation of the blockade of Charleston. But the only evidence of this is that of the master, who gave the order to burn the papers. His testimony on this subject is not entitled to full credit.

The whole of the proofs in the case, which I have attentively studied, appear to me to lead to the conclusion that the port of St. John's, N. B., as in former voyages of the vessel from Nassau, was used, simply, as a pretext to cover a voyage to Charleston, in violation of the blockade of that port, and that the destination of the vessel was in reality to that port at the time of the capture.

I affirm the decree condemning the vessel and cargo.

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THE BARK PIONEER AND CARGO.

Decree of the district court, condemning vessel and cargo as enemy property, affirmed.

(Before NELSON, J., July 17, 1863.)

NELSON, J.: The vessel and cargo in this case were captured off Cape Henry, by the steamer Quaker City, on the 20th of May, 1861. Both vessel and cargo belonged to De Voss & Co., of Richmond, Virginia, and, according to the ruling in the case of the Hiawatha, they were subject to condemnation as enemy property.

Decree below affirmed.

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THE SHIP GONDAR AND CARGO.

Vessel and cargo acquitted of a violation of, or of an attempt to violate the blockade.

Further proof ordered as to the neutral ownership of the vessel and cargo at the time of capture.

(Before NELSON, J., July 17, 1863.)

NELSON, J.: This vessel was captured at Beaufort, North Carolina, May 2, 1862, at the same time with the ship Alliance, already considered, and the decision turns very much on the principles involved in that case.

The vessel commenced her voyage in July, 1861, at Liverpool, with a cargo of salt and pig-iron, for the port of Nassau, or any port of the United States, and back to Liverpool. She arrived at Beaufort on the

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The Sarah Starr.

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27th of August following, and discharged her cargo. There was no actual blockade of that port at the time, nor until several days afterward. She commenced taking in her homeward cargo on the 1st of September, and completed her lading on the 14th. It consisted of resin and spirits of turpentine. In the mean time a blockade of the port had been established, and the vessel remained in port awaiting its removal, until she was captured. There is no evidence of any intention to break the blockade by the master, or of any act done by him with such intent.

The vessel is claimed by J. R. Armstrong and H. Gerard, residents and merchants of Liverpool, and British subjects. The claim is put in by the master in behalf of the owners. The cargo is claimed by one of these parties, J. R. Armstrong. The British register of February 11, 1861, is in the names of the above parties. The documentary proof as to the property in the cargo shows it to be in J. R. Armstrong.

I shall give the same direction to this case that I did to the case of *The ship Alliance and her cargo*, and make an order for further proofs as to the property in the vessel and cargo at the time of capture.

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THE BRIG SARAH STARR AND CARGO.

Decree of the district court, acquitting the vessel and cargo on the charge of violating the blockade, and condemning the vessel and cargo as enemy property, affirmed as to the non-violation of the blockade, and as to the vessel and a part of the cargo, they being enemy property, and reversed as to the residue of the cargo, it not being enemy property.

The claimants of such residue of the cargo were not citizens or residents of the enemy's country, and left it as soon after the breaking out of hostilities as they could convert their property into funds which could be conveniently carried with them; and they were entitled to a reasonable time to withdraw from their business connections in the enemy's country after the breaking out of the war.

(Before NELSON, J., July 17, 1863.)

NELSON, J.: The Sarah Starr, with her cargo, was captured on the 3d day of August, 1861, by the United States steamer Wabash, at sea, some thirty miles off Wilmington, North Carolina. The vessel was owned by Cowlan Gravely, a British subject, resident in Charleston, South Carolina.

The cargo, consisting of spirits of turpentine and resin, was the property of G. C. & W. J. Munro, citizens of the State of Rhode Island, and residents there, with the exception of 50 barrels of turpentine, which belonged to D. Evans, a citizen and resident of Washington, North Carolina. The Sarah Starr was purchased from C. B.

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The Sarah Starr.

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Eddy by the Munros in March, 1859, and was sold and transferred by them to C. Gravely on the 1st of July, 1861. The cargo was put on board of her during the same month, to be shipped to Liverpool. The vessel entered the port of Wilmington in March, 1861, and remained there till she sailed on her present voyage, about the 26th of July. The port of Wilmington was not in a state of actual blockade at the time of the egress of the vessel from that port.

The vessel and cargo were condemned as enemy property, and acquitted upon the charge of violating the blockade.

I concur in the condemnation of the vessel, for, although Gravely is a British subject, yet he is a resident of Charleston, South Carolina, and engaged in business there, and, for aught that appears, continued in business there since the breaking out of the war.

But the portion of the cargo belonging to G. C. & W. J. Munro stands on a different footing, and, in my judgment, is not liable to condemnation. The test oaths of those persons show the following facts, which are not in any way contradicted or unimpaired: They are, both of them, natives of Newport, Rhode Island—one born in the year 1812, the time of the other's birth not being stated. They have always resided in that State. They, both of them, have families residing there, and they own the residences in which they live. Since the commencement of their business as partners, which was about 1830, they have been in the habit, during each winter, of going, one of them, to Georgetown, South Carolina, and the other to Wilmington, North Carolina, and elsewhere in the south, making sales of goods, and re-investing the proceeds, and returning, at the end of each business season, to their homes at Newport. During their visits south on business their families remain and reside at their homes. The cargo in question was bought from time to time in the months of May, June, and July, 1861, with the proceeds of goods sold by the firm, and with collections; and the purpose of the investment was to enable them to transfer the funds from the south to New York, or some northern State. The test oaths also detail the difficulties they encountered by opposition from the authorities at Wilmington in their endeavors to ship the goods north, and the necessity they were under of adopting the expedient of selling the vessel to C. Gravely, with a condition that he should carry the cargo to Liverpool, in order to get the goods out of the country. It does not appear, from the proofs, that these parties did not leave the south after the breaking out of the disturbances. Indeed, it appears affirmatively that they did leave the country as

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The Ouachita.

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soon after the disturbances as they could convert their property into funds which could conveniently be carried with them.

Under these circumstances I am of opinion that the decree against the portion of the cargo which belongs to the Munros is erroneous, and should be reversed. The domiciles of the owners were in Newport, Rhode Island, and they were entitled to a reasonable time to withdraw from their business connections in the enemy's country after the breaking out of the war. (The San José Indiano and cargo, 2 Gall., 268, 288, 289.)

The barrels of turpentine belonging to Evans, a resident and citizen of North Carolina, were enemy property.

The decree below is affirmed as to the vessel and the cargo belonging to Evans, and is reversed as to the cargo belonging to the Munros.

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THE STEAMER OUACHITA AND CARGO.

Decree of the district court, condemning vessel and cargo for an attempt to violate the blockade, affirmed.

(Before NELSON, J., July 17, 1863.)

NELSON, J.: The steamer Ouachita was captured, as prize, by the steamship Memphis, on the 14th of October, 1862, off the southern coast, north of Charleston, S. C., in latitude 33° north, and longitude 77° 26' west. At the time of her capture she was some one hundred and fifty miles from land. When she was first discovered by the Memphis, she was only fifty or sixty miles from land. The Ouachita is owned by T. S. Begbie, a British subject, who is her claimant, and was commanded by T. S. Gilpin, also a British subject. She is a screw steamer, of about fifty tons burden. Her voyage was from London to Havana. She left in ballast, in August, 1862, and stopped at St. George's, Bermuda, where she took in a cargo of arms and ammunition for Nassau, consigned to a resident there, named Hart. The master had verbal directions from the owner, upon his arrival at Nassau, to deliver the vessel to Hart, together with whatever she had on board. Among the papers is a letter from Hart to the master, received by him while at Bermuda, in which the writer, after saying that he had been advised by the owner, Begbie, that the vessel would touch at that place, points out to the master the difficulties of escaping the United States vessels-of-war, in the passage to Nassau, and in-

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The Ouachita.

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instructs him how to avoid them. When the master left London, some letters were delivered to him by the owner, which, on opening, he found to be instructions to report to a person by the name of Bowne, at Bermuda, who would supply him with whatever was needful. Another letter was an introduction to Hart, of Nassau, and was of like purport with the one to Bowne. Bowne was shipper of the arms and ammunition on board of the vessel, at Bermuda, for Nassau. There were no bills of lading or invoice or other papers usual in case of a *bona fide* shipment; the only papers being the register, the shipping articles of the crew, and the clearance. Verbal instructions were given by Bowne to the master to follow the directions of Hart at Nassau, both as to the vessel and the cargo. There were some thirty-five tons of arms and ammunition on board. Soon after the discovery of the Memphis, on the morning of the 14th of October, the day of the capture, the Ouachita changed her course to the eastward, and, some hours after, finding that the Memphis gained on her, the master gave orders to throw the whole of the cargo overboard, which was done, with the hope of escaping, but she was overtaken and captured about four o'clock p. m. The master further states that he was chased by vessels under the command of Commodore Wilkes, when he left Bermuda, and escaped by running his vessel among the reefs. One of the crew, E. Young, first a cook on board, and afterwards a hand before the mast, testifies that the Ouachita was bound from Bermuda to Charleston, S. C.; that the cargo consisted of Enfield cartridges, rifles, and gun caps; and that the master applied to him and others of the crew to sign a paper by which to agree to run the blockade at Charleston, and offered £8 sterling if the vessel ran clear, and if not, three months' pay after capture.

I concur with the court below in the condemnation. It is impossible to doubt, upon the proofs, that the cargo was put on board the Ouachita with the intention of running the blockade of the southern coast of the Confederate States, and, especially, the blockade of the port of Charleston. The voyage from Bermuda to Havana was but a pretext. The vessel was, when captured, some six degrees north of Bermuda, and, when first chased, was within fifty or sixty miles of the coast. It is quite apparent that she was not in a course which would convey her to Nassau or Havana. The proofs also show that Begbie, the owner, was privy to, and, doubtless, originated the adventure.

Decree below affirmed.



## THE BARK GENERAL GREENE AND CARGO.

Decree of the district court, condemning the vessel as enemy property, and restoring the cargo as belonging to neutral owners, affirmed.

(Before NELSON, J., July 17, 1863.)

NELSON, J.: This vessel was captured by the Quaker City, off Cape Henry, June 4, 1861. The vessel belonged to H. Oppenheim, a citizen of South Carolina and a resident of Charleston. The cargo belonged to neutral owners. The vessel was condemned and the cargo restored.

The decree below is affirmed.

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THE BRIG DELTA AND CARGO.

Decree of the district court condemning vessel and cargo for an attempt to violate the blockade affirmed.

Under the proclamation of blockade of the President of April, 1861, as construed by the Supreme Court, a neutral vessel is not entitled to a warning at the blockaded port, if her owner or master had previous knowledge or notice of the existence of the blockade; but, in the absence of such knowledge or notice, the master is entitled to make inquiry and receive the warning before condemnation can take place.

(Before NELSON, J., July 17, 1863.)

NELSON, J.: This vessel and cargo were captured, on the 27th of October, 1861, off the port of Galveston, Texas, by the United States ship Santee. At the time of her capture she was steering for that port, to make inquiry if it was under blockade, intending, if it was so found, to sail for Matamoras. She had on board a cargo of salt, and had left Liverpool about the 1st of September, bound for Matamoras, Mexico, the cargo to be delivered at the port of Minatitlan. J. A. Marsh, of Liverpool, a British subject, is owner of the vessel, and Charles W. Adams, of Boston, an American citizen, is owner of the cargo. The latter sold the vessel to the former at Liverpool, a few days before the commencement of the voyage, and took a mortgage back to secure the purchase money, and took also a charter of the vessel for the period of eighteen months.

It is urged, on behalf of the owners of the vessel and the cargo, that, at the time of sailing from Liverpool, in the fore part of September, 1861, neither the master nor the owners had any knowledge or notice of the actual blockade of the port of Galveston; that they only

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The Delta.

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knew of the existence of the war, and of an intention to blockade the confederate ports, by the proclamation of the President, in the April preceding; and that the change of course from Matamoras or Minatitlan to Galveston, was with a view to make inquiry and ascertain whether an actual blockade had been established at the latter port. I agree, that, upon the construction given by a majority of the Supreme Court to the terms and effect of the President's proclamation, the neutral ship is not entitled to a warning at the blockaded port, if the owner or master had previous knowledge or notice of the existence of the blockade; but, in the absence of such knowledge or notice, the master, as I understand the construction, is entitled to make inquiry, and receive the warning, before condemnation can take place. If it appears, in this case, that the owners or the master were not in possession of that knowledge at the time of the sailing of the Delta from Liverpool, I should be inclined to sustain the right of the master to steer for the port of Galveston, for the purpose and with the intention stated by him. But, as I understand the deposition *in preparatorio* of Taylor, who was the supercargo employed by Adams, the owner, at Liverpool, he expressly states that he knew that the port of Galveston was under blockade before the vessel left England. Kent, the steward, also testifies to substantially the same effect, in respect to his information. It also appears, from the deposition of the mate, Davidson, that, after the vessel reached the Gulf of Mexico, the captain changed his mind as to the course of the vessel, and called into consultation Taylor, the supercargo, and the mate, and then resolved to proceed to Galveston, instead of Matamoras or Minatitlan, and inquire if that port was blockaded, and had an entry to that effect made in the master's log-book, but not in the vessel's log-book, kept by the mate. As I have already stated, two of the persons engaged in the consultation admit that they knew, at the time they left Liverpool, that the port of Galveston was blockaded, and it is difficult to believe that the master was not also aware of the fact.

It is suggested that the master learned on the voyage that negotiations for peace had taken place and were pending, but the suggestion is feebly sustained by the proofs in the case.

I may add, that the circumstances attending the sale and mortgage of the vessel are calculated to excite suspicion in respect to the *bona fides* of the voyage.

Upon the whole, after some hesitation, I am inclined to concur in the decree below, both as to vessel and cargo.

## THE STEAMER MEMPHIS AND CARGO.

Decree of the district court, condemning vessel and cargo for a violation of the blockade, affirmed.  
(Before NELSON, J., July 17, 1863.)

NELSON, J.: The steamer Memphis was captured on the 31st of July, 1862, by the United States sloop-of-war Magnolia, in latitude 33° 50' north, and longitude 78° 19' west, about eighty miles to the eastward of Charleston, South Carolina. The Memphis is an iron screw steamer, of 791 tons burden, by her register, Donald Cruikshank, master. She is a British vessel, and the cargo belongs to British subjects. Her voyage was, in fact, from Liverpool, England, to Nassau, and thence to Charleston, South Carolina. She left Liverpool on the 10th of May, and Nassau on the 19th of June, 1862, passing the United States blockading squadron, and entering Charleston, on the 23d of the same month. The cargo landed in Charleston consisted of eighty tons of gunpowder, a large quantity of rifles and muskets and general merchandise. She took on board, at Charleston, for her return voyage, some 1,500 bales of cotton and 500 casks of resin, which constituted her cargo at the time of her capture. Mr. Andrea, a part owner of the cargo which was put on board at Liverpool, says that it consisted of about 4,000 stands of arms and 900 barrels of powder; and that she had, when captured, 1,500 bales of cotton and 400 casks of resin.

The proofs are full to show that the master and Andrea, the owner of the cargo on board, knew of the blockade of Charleston at the time the vessel started for that place from Nassau, and intended to run it; and also when she left Charleston on her voyage home. They are too full and decisive of the criminal intent to call for any extended examination of them.

Decree below affirmed.

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THE STEAMER SUNBEAM AND CARGO.

Decree of the district court, condemning vessel and cargo for an attempt to violate the blockade, affirmed.

False and simulated papers as to the destination of the vessel.

The pretence that the vessel sought the blockaded port in distress overruled.

Part of the cargo was an innocent shipment, and neither the owner of it nor any of his agents were implicated in the fault of the vessel. But, in case of a blockade, the general rule is, that

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The Sunbeam.

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the deviation of the vessel into the blockaded port is presumed to be in the service of the cargo, and that the owner is bound by it, except in the absence of notice of the blockade at the time the vessel sailed. In this case there was no such want of notice.

(Before NELSON, J., July 17, 1863.)

NELSON, J.: This steamer was captured in the act of entering the port of Wilmington, North Carolina, a blockaded port, on the morning of the 28th of September, 1862, by the United States steamer *State of Georgia*. She belongs to H. Lafone, a merchant of Liverpool, and a British subject, who is also owner of all the cargo except eighteen bales of merchandise, worsted stuffs, belonging to J. Greenwood, of Bradford, England, their manufacturer. The cargo belonging to Lafone consists of powder, lead, arms, boots, shoes, &c., and was put on board at Liverpool in August, 1862. The bales of worsted stuffs were shipped at the same time and place through agents of the manufacturer and owner. The ostensible destination of the vessel was to Matamoras, Mexico. She started on her voyage from Liverpool on the 6th of August, reached Halifax on the 5th of September, left that place for Matamoras on the 14th of the month, and on the 28th was captured, as already stated, while entering the port of Wilmington.

The pretext set up for the deviation and the entrance into that port is, the disabled condition of the vessel from a storm encountered on the voyage on the 19th of September, eight days before the capture. Without going over the evidence, I deem it sufficient to say that this storm and its effects upon the vessel are greatly exaggerated, and do not furnish a satisfactory excuse for her position at the time of the capture. There are also many facts and circumstances in the case tending strongly to the conclusion that the voyage to Matamoras was simulated, and that the original destination was to one of the ports of the Confederate States.

It has been strongly argued that the owner of the worsted stuffs was ignorant and innocent of the fault of the master, and that the master was not the agent of that part of the cargo, which was shipped in the usual way, with a separate and distinct bill of lading, invoice, &c., and that it should not be held responsible for the deviation of the ship into a blockaded port.

I am inclined to think, upon a full consideration of the evidence bearing upon this part of the case, that, in point of fact, this was an innocent shipment, and that neither the owner nor any of his agents were implicated in the fault of the vessel. But the general rule seems

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*The Mersey.*

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to be, that, in case of a blockade, the deviation of the vessel into the blockaded port is presumed to be in the service of the cargo, and that the owner is bound by it, except in the absence of notice of the blockade at the time the vessel sailed. In this case the vessel sailed from Liverpool on the 6th of August, 1862, some months over a year after the establishment of the blockade of the ports of the State of North Carolina. The fact was well known at Liverpool, and, indeed, in all England, at the time the ship sailed.

Decree below affirmed.

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THE SCHOONER MERSEY AND CARGO.

Decree of the district court condemning vessel and cargo reversed, they not being enemy property, and there having been no violation of, or attempt to violate, the blockade.

(Before NELSON, J., July 17, 1863.)

NELSON, J.: This vessel and cargo were captured on the 26th of April, 1862, in the Gulf Stream, about one hundred miles from land, and two days out from Nassau, N. P., on a voyage from the latter place to Baltimore and back. Her cargo, which was put on board at Nassau, consisted of salt, coffee, soap, merchandise, &c. The vessel is owned by Roberts, a merchant and resident of Nassau, and a British subject. The cargo is owned by Sawyer & Menendez, of the same place, one of them a British subject, and the other a Spanish. According to the evidence the vessel was in her proper course, pursuing her voyage to Baltimore, and without any intent to run the blockade of any of the confederate ports. She seems to have been convicted on suspicion, from hearsay evidence and report that she had run the blockade of Charleston on her previous voyage, and that she was still the property of a citizen and resident of some of the southern States. I am not satisfied that these facts, or any of them, have been established by competent proof. The cargo, it is admitted, belongs to British and Spanish subjects.

Much stress is laid upon a mutilation of the log-book, which is fully explained by the further evidence of the mate and steward.

Decree below reversed.

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The Lynchburg.—The Empress.

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## THE SCHOONER LYNCHBURG AND CARGO.

Decree of the district court, so far as it condemned the vessel and all of the cargo except 504 bags of coffee, affirmed. As to the 504 bags of coffee, further argument ordered as to the proprietary interest therein; and either party allowed to produce further proof upon it.

(Before NELSON, J., July 17, 1863.)

NELSON, J.: There is no dispute, in this case, that the vessel, and also a portion of the cargo, belong to citizens of Virginia and residents of Richmond. The cargo consisted of coffee, of which 2,045 bags are claimed by Brown Brothers & Co., of New York, citizens of a loyal State. Of these, 1,541 bags were restored to them, and the residue were condemned. I desire to hear a further argument upon the question as to the proprietary interest in the residue of the 2,045 bags of coffee, beyond the 1,541 claimed by Brown Brothers & Co., and either party may produce further proof upon it.

The decree below is affirmed as to the vessel, and all of the cargo except the residue of the 2,045 bags of coffee, after the restoration of the 1,541 bags.

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THE BARK EMPRESS AND CARGO.

Decree of the district court, condemning vessel and cargo for an attempt to violate the blockade, reversed.

The purpose of the master in approaching the blockaded port was to inquire whether it was actually blockaded.

Under the circumstances of this case, the master was justified in making such inquiry.

The master thought he would be entitled to a warning from a blockading vessel before a forfeiture would be enforced, and acted on such a construction of the President's proclamation of blockade, and on directions to that effect contained in the charter-party for the voyage, and in the instructions to him from the charterers, although he had good reason to believe that the port was in a state of actual blockade.

Although the terms of the proclamation afford no justification for the act of the master, they are entitled to consideration on the question of the intent with which the master was sailing for the blockaded port.

Although the general rule may be that, even in the case of a blockade *de facto*, such as the present was, the inquiry must not be made at the blockaded port, if it be reasonably practicable to ascertain the fact by inquiry at a neutral port; yet there are exceptions to that rule, and this case is one of them.

(Before NELSON, J., July 17, 1863.)

NELSON, J.: This vessel and cargo were captured on the morning of the 28th of November, 1861, by the sloop-of-war Vincennes, at the mouth of the Mississippi river, off the Southeast Pass, some three miles from the Balize. The vessel was under a charter-party, entered into by the master, at Rio Janeiro, on the 5th of September, 1861, to ship

a cargo of coffee to "New Orleans or Mobile, as may be ordered by the charterers, and if the vessel, on arrival, be warned off by a blockading squadron, to proceed either to New York, Baltimore, or Philadelphia, which second place is likewise to be named by the charterers previous to the departure of the vessel from Rio de Janeiro. If warned off New Orleans or Mobile, the master to deliver at the port of discharge the order from the officer warning him off," &c.

On the 14th of September, 1861, the master was instructed by the charterers to proceed to New Orleans with his cargo, (6,185 bags of coffee,) and should the port be open upon his arrival, the bill of lading indorsed would advise him to whom to deliver the cargo, but should the port be blockaded, he would be warned off, and would then proceed direct to New York.

The vessel belonged to a British subject residing in Hull, England, and had sailed from that port in May, 1861, with a cargo of coal and cast-iron buildings for Rio Janeiro. On discharging her cargo, she was put up for freight by the master, which led to the charter above referred to. The cargo on board belongs to the charterers, William Moore & Co., British and Brazilian subjects.

The only question in the case is, whether or not the vessel and cargo are subject to condemnation for attempting to break the blockade of the port of New Orleans. Upon a perusal of the testimony *in preparatorio* and the documentary proofs, I am satisfied that there was no such intent on the part of the master or of the owners of the cargo; but that, on the contrary, their purpose was to ascertain, at the mouth of the Mississippi river, by personal inquiry, whether or not the port of New Orleans was actually blockaded. This was, I think, the *bona fide* intention of the parties. There was no disguise of the purpose, as it was avowed in the charter party, and in the written instructions from the owners of the cargo, and repeatedly by the master himself; and the only question is, whether the master was justified, under the circumstances disclosed in the case, in making such inquiry.

It is quite apparent that these parties adopted that construction of the proclamation of the President announcing an intent to set on foot a blockade of the southern ports, which is indicated by its terms—that a vessel sailing for a port in a state of blockade would be entitled to a warning from one of the blockading vessels before a forfeiture would be enforced; and that, acting upon such construction, and the consequent directions found in the charter party, and the instructions from the charterers, the master persevered in the purpose of making the in-

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The John Gilpin.

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quiry, although, at the same time, he had good reason for the belief that the port was in a state of actual blockade. This interpretation of the proclamation was overruled by a majority of the Supreme Court in the case of the *Hiawatha*, and must be regarded, therefore, as affording no justification to either vessel or cargo.

But, although the terms of the proclamation furnish no justification for the act, yet, I think they are entitled to consideration when we are inquiring into the intent with which the master was sailing for the blockaded port. These terms may have honestly misled him; and the fact that the vessel was found at a place which would, under other circumstances, be suspicious, may, in view of those terms, be consistent with her entire innocence.

There was no official notice of the blockade of the port of New Orleans given by this government to the British or the Brazilian government. There is no evidence in this case at what time it was established. The case must stand upon a blockade *de facto*, as it respects foreign neutral traders at the belligerent port. No doubt a general notoriety prevailed at Rio Janeiro, at the time of the sailing of the vessel from that place, that the mouths of the Mississippi were blockaded; and the master of the vessel was advised, in the course of the voyage, by a vessel which he hailed, that he would be stopped at the Balize. There are, undoubtedly, cases which hold, as a general rule, that, even in the case of a blockade *de facto*, the inquiry must not be made at the blockaded port, if it be reasonably practicable to ascertain the fact by inquiry at a neutral port. There are, however, exceptions to this rule, and, under all the circumstances and proofs in the case, I am inclined to think that the present is one of them.

The decree of the court below is reversed.

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THE SCHOONER JOHN GILPIN AND CARGO.

Decree of the district court, condemning the cargo, reversed.

A citizen temporarily residing in the enemy's country at the breaking out of the war is entitled to a reasonable time to collect his effects, and convert them into available and manageable funds, so as to enable him to withdraw them from the country.

The transaction in this case was an honest and *bona fide* effort for that purpose.

(Before NELSON, J., November 7, 1863.)

NELSON, J.: This vessel, with her cargo, consisting of cotton and staves, was captured about the 25th of April, 1862, in the port of New



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The John Gilpin.

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Orleans, by gunboat No. 8, of Captain Farragut's fleet, after the taking of the city of New Orleans. The proceedings against the vessel were suspended in the court below, and a decree of condemnation was rendered against the cargo as enemy property.

The claimants are the Weymouth Iron Company, a corporation of the State of Massachusetts. It appears from the test oaths that, in the latter part of 1860, this company shipped large quantities of nails manufactured by them, which were consigned to a house in New Orleans for sale on commission. The shipment was at their risk; the sale was to be made on their account, and the proceeds were to be remitted. At the breaking out of the war, a large stock of these nails, unsold, remained in the hands of the agent. After the disturbances of the war, the article being unsalable, the agent, Mr. Baldwin, exchanged the nails for cotton, which was put on board of the schooner with the intent to ship the same, as the proceeds of the nails, to the owners in Massachusetts. The original design was to get access to the blockading squadron and obtain permission to send the proceeds home; but, access for that purpose not having been obtained previous to the capture of the city, the vessel remained at her wharf, and was there found under the circumstances stated, where she was seized, as already mentioned, as prize of war. It further appears from the test oaths that the agent had much difficulty in preventing the property from being seized by the enemy, and had to resort to various devices to conceal and preserve it for the owners. The precise time when the exchange of the nails for the cotton took place in New Orleans does not appear. It is, however, fairly to be inferred from the proofs, that it was as early as June, 1861, and prior to the proclamation of the President prohibiting commercial intercourse with the enemy, in pursuance of the act of July 13, 1861, which proclamation was issued on the 16th of August following.

I have had before me heretofore the question involved in this case, and came to the conclusion that a citizen temporarily residing in the enemy's country at the breaking out of the war was entitled to a reasonable time to collect his effects and convert them into available and manageable funds, so as to enable him to withdraw them from the country. The whole transaction in this case seems to have been an honest and *bona fide* effort for this purpose. The case, as it stands upon the proofs, is a meagre one. But one witness on board of the vessel, the mate, was examined in *preparatorio*, and none of the

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The Albert.

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ship's papers are produced. Their absence and also the absence of the other hands on the vessel are sought to be accounted for by the confusion and disorder that reigned in the city at and after the capture.

The only question is, whether or not the cotton, under the facts and circumstances stated, was enemy property. There is no question of blockade. The vessel and cargo were, at the time of capture, waiting at the wharf with a view to obtain permission for a lawful voyage, that the proceeds of the nails might be sent home. I cannot think that they should be regarded as enemy property, and must, therefore, reverse the decree below, and direct one to be entered for the claimants dismissing the libel.

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## THE SCHOONER ALBERT AND CARGO.

Decree of the district court, condemning vessel and cargo for an attempt to violate the blockade, affirmed.

The excuse set up, that the vessel sought the blockaded port under stress of weather, overruled.

(Before NELSON, J., November 11, 1863.)

NELSON, J.: This vessel and cargo were captured off Rattlesnake Shoals, near the mouth of Charleston harbor, South Carolina, about fifteen or twenty miles from Charleston. The vessel was, at the time, steering a straight course into the harbor. The capture was made on the 1st of May, 1862. The vessel, with part of her cargo, sailed from Matamoras, Cuba, stopped at Nassau, and took in the rest, and started, according to her papers, for the port of New York. The cargo consisted chiefly of coffee, sweet oil, fruits, and salt. The captain admits that he was wide of his regular course to New York at the time of the capture; and also that he was steering, at the time, square into the coast, which, as explained by one of the officers on board of the gunboat Huron, which made the capture, was sailing square into the harbor of Charleston.

The excuse set up is, that the vessel encountered great stress of weather and head winds. But it does not appear that she was in any way disabled or crippled, or that any reason existed for seeking to enter the port of Charleston. The whole of the proofs satisfy me that the excuse set up is without any meritorious foundation, and does not reasonably explain the suspicious position of the vessel. She had been previously warned not to enter the port, as it was in a state of blockade, and the warning is noted on her papers. The court below con-

demned the vessel and cargo. I think that the decree was right and should be affirmed.

The vessel and cargo have been sold under an interlocutory order, and the fund remains for distribution.

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#### THE SCHOONER EZILDA AND CARGO.

Decree of the district court, condemning vessel and cargo for an attempt to violate the blockade, affirmed.

(Before NELSON, J., November 11, 1863.)

NELSON, J.: The vessel and cargo in this case were captured about the 1st of October, 1861, by the United States steamer South Carolina, while attempting to break the blockade off New Orleans. The proof is full on this point. The vessel was taken into the service of the government, as also some arms found on board of her. The vessel and cargo were condemned in the court below. On appeal by the claimant the case was submitted, on briefs, at the last April term, but no copies of apostles were delivered to the court. I have taken the original papers on file and looked into them. There does not appear to have been any claim for the cargo. I agree that the vessel and cargo were rightfully condemned, and affirm the decree below.

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#### THE STEAMER PATRAS AND CARGO.

Decree of the district court, condemning vessel and cargo for an attempt to violate the blockade, affirmed.

(Before NELSON, J., November 14, 1863.)

NELSON, J.: This steamer, with a cargo consisting of powder, arms, ammunition, coffee, and quinine, was captured off Charleston harbor, South Carolina, May 27, 1862, by the United States steamer Bienville. The proofs are full that she was captured while attempting to break the blockade of the port of Charleston, and that she attempted to escape, but was pursued and captured. The vessel was from Hull, England, and was ostensibly bound, on the voyage on which she was taken, from Havana to St. John's, N. B.

The court below condemned the vessel and cargo. Most of the cargo has heretofore been sold or appraised and delivered to the government.

The decree of the court below is affirmed.

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The Stettin.—The Nassau.

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## THE STEAMER STETTIN AND CARGO.

Decree of the district court, condemning vessel and cargo for an attempt to violate the blockade affirmed.

(Before NELSON, J., November 14, 1863.)

NELSON, J.: This steamer, with a cargo consisting of tea, coffee, brandies, lead, shoes, &c, was captured on the 24th of May, 1862, while attempting to break the blockade of the port of Charleston, South Carolina, by the United States steamer *Bienville*.

The proofs are full, that the vessel was not only near the mouth of the harbor of Charleston at the time of her capture, but that she was intending to enter it, with full knowledge of the blockade. The vessel has been appraised and delivered to the government, and most of the cargo has been sold. The court below decrees a condemnation of the vessel and cargo.

The decree of the court below is affirmed.

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THE STEAMER NASSAU AND CARGO.

Property seized as prize of war under the law of nations is discharged from all latent liens or incumbrances, and in this respect is distinguishable from property seized as forfeited under the municipal laws of a State.

Vessels and cargoes seized for a violation of the laws of blockade, or as enemy property, are prize of war under the law of nations, and not under municipal authority.

Decree of the district court, refusing to recognize a lien upon the vessel for repairs made and materials furnished prior to the war, affirmed.

(Before NELSON, J., November 18, 1863.)

NELSON, J.: The *Nassau* was captured on the 28th of May, 1862, by the steamer *State of Georgia*, while attempting to break the blockade of the port of Wilmington, North Carolina. The vessel has been sold, and a great portion of the cargo, consisting of arms and military equipments, has been appraised and turned over to the government.

Harlan and others intervened in the court below, and claimed a lien upon the vessel as material men, and for repairs made upon her at their yard in Wilmington, in the State of Delaware, in the summer of 1860. The amount claimed is some \$10,000 and upwards. It is admitted that property seized as prize of war, under the law of nations, is discharged from all latent liens or incumbrances, and, in this respect, is distinguishable from property seized as forfeited under the municipal laws of a State. The learned counsel for the claimants has, with great industry and ability, sought to bring the case of the seizure of the

Nassau within the latter category; but, after the judgment of the court in the case of *The Hiawatha*, and especially after a state of *civil war* was recognized by the war-making power under the Constitution, there can be no well-founded doubt that vessels and cargoes seized for a violation of the laws of blockade, or as enemy property, are prize of war under the law of nations, and not under municipal authority. This vessel was, as we have seen, captured as late as May, 1862. The case of the claimants is, no doubt, a hard one. The remedy, however, is not in the courts, but in an appeal to the government, in whose hands are the proceeds of the vessel.

Decree below affirmed.

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#### THE BARK PIONEER AND CARGO.

Hearing, on further proof, as to the claim by one of the owners of the vessel and cargo that he was at the time of the breaking out of the war, and at the time of the capture, a resident consul, at Richmond, of the empire of Austria, recognized by this government; that his interest is not to be regarded as enemy property, inasmuch as he intercepted the vessel and cargo while on their way to a blockaded port of the enemy, and took measures to send them to a loyal port, and had thus done everything in his power to withdraw his property from the enemy's country; that while in the act of being withdrawn it was not liable to capture; and that he was not bound to follow it, as his duty as consul, and his right under a treaty between the United States and Austria, justified and satisfactorily explained his continued residence in the enemy's country.

Where a foreign consul is carrying on trade as a merchant in the enemy's country his consular residence and character will not protect that trade from interruption by the seizure and condemnation of his property as enemy's property; and, notwithstanding his consular character, he is to be considered in all commercial transactions as on the same footing with any other resident merchant.

If, on the breaking out of the war, he puts an end to his business as a merchant, continuing his residence solely as consul, his property, which is intercepted by him on its way to a blockaded port of the enemy, and prevented from entering that port, with a view to send it to a loyal one, should perhaps not be regarded as enemy property.

Decree of the district court, condemning the property as enemy property, affirmed.

(Before NELSON, J., November 25, 1863.)

NELSON, J.: This case comes up on further proofs on the part of the claimant De Voss, one of the owners of the vessel and cargo.

The firm of De Voss & Hanniwinkle were residents and engaged in business at Richmond, Virginia, at the date of the proclamation of the President of April, 1861, and had been for some twenty years. The *Pioneer*, with a cargo of tobacco and flour belonging to this firm, sailed from City Point in the fore part of December, 1860, for Liverpool, where, after discharging her cargo, she took in a return cargo of salt for Richmond, and sailed for that port from Liverpool on the 17th of April, 1861. She reached the coast off Hampton Roads on the 20th

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The Pioneer.

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of May following, and was met by a pilot with a letter from the owners, advising the captain of the proclamation and of the blockade of the port, and instructing him not to attempt to enter, but to change his course to the port of Baltimore. While in the act of obeying these instructions, the vessel was discovered by one of the blockading squadron, and was seized as prize of war and sent to this port for adjudication. The court below condemned the vessel and cargo, not for breaking the blockade, but as enemy property. On an appeal to this court this decree was affirmed within the rule established in the case of *The Hiawatha* and that class of cases, decided in the Supreme Court of the United States.

The new proof now offered, and which was received by consent of the United States district attorney, is, that De Voss, one of the partners, was, at the time of the breaking out of the war, and at the time of the capture, a resident consul at Richmond, of the Empire of Austria, recognized by this government. Upon this new fact, in connection with the case as before presented, it is now insisted by the learned counsel for the claimant that the interest of the partner De Voss is not to be regarded as enemy property, inasmuch as, having intercepted the vessel and cargo, and taken measures immediately to send them to a loyal port, and having thus prevented the property from entering a port of the enemy, he had done everything in his power, under the circumstances, to withdraw it from the enemy's country which he had a right to do within the rules of international law; that, while in the act of being withdrawn, it was not liable to capture; and that he was not bound to follow it, as his duty as consul and his right under a treaty between the United States and Austria justified and satisfactorily explained his continued residence at Richmond, in the enemy's country.

It is admitted that, in the case of a foreign consul who is carrying on trade as a merchant in the enemy's country, his consular residence and character will not protect that trade from interruption by the seizure and condemnation of his property as enemy property; and that, notwithstanding his consular character, he is to be considered, in all commercial transactions, as on the same footing with any other resident merchant. The mere fact, therefore, that De Voss was a resident consul, cannot confer upon him any privileges, so far as concerns his commercial transactions, over any other merchant resident in the enemy's country. He stands on the same footing as his partner Mr.

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The Ezilda.—The Patras.

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demned the vessel and cargo. I think that the decree was right and should be affirmed.

The vessel and cargo have been sold under an interlocutory order, and the fund remains for distribution.

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#### THE SCHOONER EZILDA AND CARGO.

Decree of the district court, condemning vessel and cargo for an attempt to violate the blockade, affirmed.

(Before NELSON, J., November 11, 1863.)

NELSON, J.: The vessel and cargo in this case were captured about the 1st of October, 1861, by the United States steamer South Carolina, while attempting to break the blockade off New Orleans. The proof is full on this point. The vessel was taken into the service of the government, as also some arms found on board of her. The vessel and cargo were condemned in the court below. On appeal by the claimant the case was submitted, on briefs, at the last April term, but no copies of apostles were delivered to the court. I have taken the original papers on file and looked into them. There does not appear to have been any claim for the cargo. I agree that the vessel and cargo were rightfully condemned, and affirm the decree below.

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#### THE STEAMER PATRAS AND CARGO.

Decree of the district court, condemning vessel and cargo for an attempt to violate the blockade, affirmed.

(Before NELSON, J., November 14, 1863.)

NELSON, J.: This steamer, with a cargo consisting of powder, arms, ammunition, coffee, and quinine, was captured off Charleston harbor, South Carolina, May 27, 1862, by the United States steamer Bienville. The proofs are full that she was captured while attempting to break the blockade of the port of Charleston, and that she attempted to escape, but was pursued and captured. The vessel was from Hull, England, and was ostensibly bound, on the voyage on which she was taken, from Havana to St. John's, N. B.

The court below condemned the vessel and cargo. Most of the cargo has heretofore been sold or appraised and delivered to the government.

The decree of the court below is affirmed.

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The Stettin.—The Nassau.

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## THE STEAMER STETTIN AND CARGO.

Decree of the district court, condemning vessel and cargo for an attempt to violate the blockade affirmed.

(Before NELSON, J., November 14, 1863.)

NELSON, J.: This steamer, with a cargo consisting of tea, coffee, brandies, lead, shoes, &c, was captured on the 24th of May, 1862, while attempting to break the blockade of the port of Charleston, South Carolina, by the United States steamer Bienville.

The proofs are full, that the vessel was not only near the mouth of the harbor of Charleston at the time of her capture, but that she was intending to enter it, with full knowledge of the blockade. The vessel has been appraised and delivered to the government, and most of the cargo has been sold. The court below decrees a condemnation of the vessel and cargo.

The decree of the court below is affirmed.

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THE STEAMER NASSAU AND CARGO.

Property seized as prize of war under the law of nations is discharged from all latent liens or incumbrances, and in this respect is distinguishable from property seized as forfeited under the municipal laws of a State.

Vessels and cargoes seized for a violation of the laws of blockade, or as enemy property, are prize of war under the law of nations, and not under municipal authority.

Decree of the district court, refusing to recognize a lien upon the vessel for repairs made and materials furnished prior to the war, affirmed.

(Before NELSON, J., November 18, 1863.)

NELSON, J.: The Nassau was captured on the 28th of May, 1862, by the steamer State of Georgia, while attempting to break the blockade of the port of Wilmington, North Carolina. The vessel has been sold, and a great portion of the cargo, consisting of arms and military equipments, has been appraised and turned over to the government.

Harlan and others intervened in the court below, and claimed a lien upon the vessel as material men, and for repairs made upon her at their yard in Wilmington, in the State of Delaware, in the summer of 1860. The amount claimed is some \$10,000 and upwards. It is admitted that property seized as prize of war, under the law of nations, is discharged from all latent liens or incumbrances, and, in this respect, is distinguishable from property seized as forfeited under the municipal laws of a State. The learned counsel for the claimants has, with great industry and ability, sought to bring the case of the seizure of the





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**RULES**  
**IN**  
**PRIZE CASES,**  
**IN THE**  
**SOUTHERN DISTRICT OF NEW YORK.**

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## PRIZE RULES.

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[The following Rules of the district court of the United States for the southern district of New York in prize cases were in force during the time covered by the foregoing decisions made by that court: ]

*Rule 1.*—There shall be issued, under the seal and authority of this court, commissions to such persons as the court shall think fit, appointing them severally commissioners to take examinations of witnesses in prize causes *in preparatorio*, on the standing interrogatories, which have been settled and adopted by this court, and all other depositions which they are empowered to require, and to discharge such other duties in relation to ships, or vessels, or property brought into this district, as prize, as shall be designated by the said commissions, and the rules and orders of this court.

*Rule 2.*—The captors of any property brought into this district as prize, or some one on their behalf, shall, without delay, give notice to the district judge, or to one of the commissioners aforesaid, of the arrival of the property, and of the place where the same may be found.

*Rule 3.*—Upon the receipt of notice thereof from the captors, or district judge, a commissioner shall repair to the place where the said prize property then is; and if the same be a ship, or vessel, or if the property be on board a ship or vessel, he shall cause the said ship or vessel to be safely moored in sufficient depth of water, or in soft ground.

*Rule 4.*—The commissioner shall, in case the prize be a ship or vessel, examine whether bulk has been broken; and if it be found that bulk has been broken, one of the said commissioners shall take information upon what occasion, or for what cause, the same was done. If the property captured be not a ship or vessel, or in a ship or vessel, he shall examine the chests, packages, boxes, or casks, containing the subject captured, and shall ascertain whether the same has been opened, and shall, in every case, examine whether any of the property originally captured has been secreted or taken away subsequently to the capture.

*Rule 5.*—The commissioner in no case shall leave the captured property until he secure the same by seals upon the hatches, doors, chests, bales, boxes, casks, or packages, as the case may require, so that they cannot be opened without breaking the said seals; and the said seals shall not be broken, or the property removed, without the special order of the court, excepting in case of fire and tempest, or of absolute necessity.

*Rule 6.*—If the captured property be not a vessel, or on board a vessel, the commissioner shall take a detailed account of the particulars thereof, and shall cause the same to be deposited, under the seals as aforesaid, in a place of safety, there to abide the order or decree of this court.

*Rule 7.*—If no notification shall, within reasonable time, be given by the captors, or by any person in their behalf, of any property which may be brought as prize within this district, and the commissioners, or either of them, shall become informed thereof by any means, it shall be the duty of the said commissioners, or one of them, to repair to the place where such property is, and to proceed in respect to the same as if notice had been given by the captors.

*Rule 8.*—The captor shall deliver to the judge—at the time of such notice, or to the commissioner or commissioners, when he or they shall, conformably to the foregoing rule, repair to the place where such captured property is, or at such other time as the said commissioners, or either of them, shall require the same—all such papers, passes, sea-briefs, charters, bills of lading, cockets, letters, and other documents and writings as shall have been found on board the captured ship, or which have any reference to or connection with the captured property, and which are in the possession, custody, or power of the captors.

*Rule 9.*—The said papers, documents, and writings shall be regularly marked and numbered by a commissioner, and the captor, chief officer, or some other person who was present at the taking of the prize, and saw that such documents, papers, and writings were found with the prize, must make a deposition before one of the said commissioners that they have delivered up the same to the judge or commissioner as they were found or received, without any fraud, subduction, or embezzlement. If any documents, papers, or writings, relative to or connected with the captured property, are missing or wanting, the deponent shall, in his said deposition, account for the same, according to the best of his knowledge, information, and belief.

*Rule 10.*—The deponent must further swear that if, at any time thereafter, and before the final condemnation or acquittal of the said

property, any further or other papers relating to the said captured property shall be found or discovered to the knowledge of the deponent, they shall also be delivered up, or information thereof given to the commissioners or to this court, which deposition shall be reduced to writing by the commissioner, and shall be transmitted to the clerk of the court, as hereinafter mentioned.

*Rule 11.*—When the said documents, papers, and writings are delivered to a commissioner, he shall retain the same till after the examination *in preparatorio* shall have been made by him, as is hereafter provided, and then he shall transmit the same, with the same affidavit in relation thereto, the preparatory examinations, and the information he may have received in regard to the said captured property, under cover and under his seal, to this court, addressed to the clerk thereof, and expressing on the said cover to what captured property the documents relate, or who claim to be the captors thereof, or from whom he received the information of the capture; which said cover shall not be opened without the order of the court.

*Rule 12.*—Within three days after the captured property shall have been brought within the jurisdiction of this court, the captor shall produce to one of the commissioners three or four, if so many there be, of the company or persons who were captured with, or who claim the said captured property; and in case the capture be a vessel, the master and mate, or supercargo, if brought in, must always be two, in order that they may be examined by the commissioner *in preparatorio* upon the standing interrogatories.

*Rule 13.*—In the examination of witnesses *in preparatorio*, the commissioner shall use no other interrogatories but the standing interrogatories, unless special interrogatories are directed by the court. He shall write down the answer of every witness separately to each interrogatory, and not to several interrogatories together; and the parties may personally, or by their agents, attend the examination of witnesses before the commissioners; but they shall have no right to interfere with the examination by putting questions or objecting to questions; nor to take notes of the proceedings before the commissioner, to be used otherwise than before the court. All objections to the regularity or legality of the proceedings of the commissioners must be made to the court.

*Rule 14.*—When a witness declares he cannot answer to any interrogatory, the commissioner shall admonish the witness that, by virtue of his oath taken to speak the truth, and nothing but the truth, he

must answer to the best of his knowledge; or when he does not know absolutely, then to answer to the best of his belief concerning any one fact.

*Rule 15.*—The witnesses are to be examined separately, and not in presence of each other, and they may be kept from all communication with the parties, their agents, or counsel, during the examination. The commissioners will see that every question is understood by the witnesses, and will take their exact, clear, and explicit answers thereto; and if any witness refuses to answer at all, or to answer fully, the examining commissioner is forthwith to certify the facts to the court.

*Rule 16.*—The captors must produce all their witnesses in succession, and cannot, after the commissioners have transmitted the examination of a part of the crew to the judge, be allowed to have others examined without the special order of the court; and the examination of every witness shall be begun, continued, and finished in the same day, and not at different times. Copies of the standing interrogatories shall not be returned by the commissioner with the examinations, but it shall be sufficient for the answer of the witnesses to refer to the standing interrogatories by corresponding numbers.

*Rule 17.*—Before any witness shall be examined on the standing interrogatories the commissioner shall administer to him an oath in the following form: "You shall true answer make to all such questions as shall be asked of you on these interrogatories, and therein you shall speak the whole truth, and nothing but the truth, so help you God." If the witness is conscientiously averse to swearing, an affirmation to the same effect shall be administered to him.

*Rule 18.*—Whenever the ship's company, or any part thereof, of a captured vessel are foreigners, or speak only a foreign language, the commissioner taking the examination may summon before him competent interpreters, and put to them an oath well and truly to interpret to the witness the oath administered to him, and the interrogations propounded, and well and truly to interpret to the commissioners the answers given by the witness to the respective interrogatories.

*Rule 19.*—The examination of each witness on the standing interrogatories shall be returned according to the following form:

"Deposition of A B, a witness produced, sworn, and examined *in preparatorio*, on the ——— day of ———, in the year ———, at the ——— of ———, on the standing interrogatories established by the district court of the United States for the southern district of New York; the said witness having been produced for the purpose of such examination by C D, in behalf of the captors of a cer-

tain ship or vessel called the \_\_\_\_\_, (or of certain goods, wares, and merchandise, as the case may be.)

1st. To the first interrogatory the deponent answers that he was born at \_\_\_\_\_, &c.

2d. To the second interrogatory the deponent answers that he was present at the time of the taking, &c.

*Rule 20.*—When the interrogatories have all been answered by a witness, he shall sign his deposition, and the commissioner shall put a certificate thereto in the usual form, and subscribe his name to the same.

*Rule 21.*—No person having or claiming any interest in the captured property, or having any interest in any ship having letters of marque or commissions of war, shall act as a commissioner. Nor shall a commissioner act either as proctor, advocate, or counsel, either for captors or claimants, in any prize cause whatever.

*Rule 22.*—If the captain or prize-master neglect or refuse to give up and deliver to the commissioners the documents, papers, and writings relating to the captured property, according to these rules, or refuse or neglect to produce, or cause to be produced, witnesses to be examined *in preparatorio*, within three days after the arrival of the captured property within the jurisdiction of this court, or shall otherwise unnecessarily delay the production of the said documents, papers, or writings, the commissioners, or one of them nearest to the place where the captured property may be, or before whom the examination *in preparatorio* may have been already begun, shall give notice in writing to the delinquent to forthwith produce the said documents, papers, and writings, and to bring forward his witnesses; and if he shall neglect or delay so to do for the period of twenty-four hours thereafter, such commissioner shall certify the same to this court, that such proceedings may thereupon be had as justice may require.

*Rule 23.*—If within twenty-fours after the arrival within this district of any captured vessel, or of any property taken as prize, the captors, or their agents, shall not give notice to the judge or a commissioner pursuant to the provisions herein made, or shall not, two days after such notice given, produce witnesses to be examined *in preparatorio*, then any person claiming the captured property and restoration thereof may give notice to the judge or the commissioners, as aforesaid, of the arrival of the said captured property; and thereupon such proceedings may be had by the commissioners in respect to the said property, and relative to the documents, papers, and writings



connected with the said capture, which the claimant may have in his possession, custody, or power, and relative to the examination of witnesses *in preparatorio*, as near as may be, as is before provided for in cases where the captors shall give notice and examine *in preparatorio*. And the said claimant may in such cases file his libel for restitution, and proceed thereon according to the rules and practice of this court.

*Rule 24*.—As soon as may be convenient, after the captured property shall have been brought within the jurisdiction of this court, a libel may be filed, and a monition shall thereupon be issued, and such proceedings shall be had as are usual in conformity to the practice of this court in cases of vessels, goods, wares, and merchandise seized as forfeited, in virtue of any revenue law of the United States.

*Rule 25*.—In all cases, by consent of captor and claimant, or upon attestation exhibited upon the part of the claimant only, without consent of the captor, that the cargo or part thereof is perishing or perishable, the claimant, specifying the quantity and quality of the cargo, may have the same delivered to him, on giving bail to answer the value thereof if condemned, and further to abide the event of the suit; such bail to be approved of by the captor, or otherwise the persons who give security swearing themselves to be severally and truly worth the sum for which they give security. If the parties cannot agree upon the value of the cargo, a decree or commission of appraisement may issue from the court to ascertain the value.

*Rule 26*.—In cases where there is no claim, an affidavit being exhibited on the part of the captor of such perishing or perishable cargo, specifying the quantity and quality thereof, the captor may have a decree or commission of appraisement and sale of such cargo, the proceeds thereof to be brought into court, to abide the further orders of the court.

*Rule 27*.—The name of each cause shall be entered by the clerk upon the docket for hearing in their order, according to the dates of the returns of the monitions, and lists of the causes ready for hearing are to be constantly hung up in the clerk's office for public inspection.

*Rule 28*.—In all cases where a decree or commission of appraisement and sale of any ship and cargo, or either of them, shall have issued, no question respecting the adjudication of such ship and goods, or either of them, as to freight or expenses, shall be heard till the said decree or commission shall be returned, with the account of sales, and the proceeds, according to such account of sales, be paid into court, to abide the order of the court in respect thereto.

**Rule 29.**—After the examination, taken *in preparatorio* on the standing interrogatories, are brought into the clerk's office, and the monition has issued, no further or other examinations upon the said interrogatories shall be taken, or affidavits received, without the special directions of the judge, upon due notice given.

**Rule 30.**—None but the captors can, in the first instance, invoke papers from one captured vessel to another, nor can it be done without the special mandate of the judge; and, in case of its allowance, only extracts from the papers are to be used.

**Rule 31.**—The invocation shall only be allowed on affidavit on the part of the captors, satisfying the court that such papers are material and necessary.

**Rule 32.**—Application for permission to invoke must be on service, at least two days previously, of notice thereof, and copy of the affidavit, on the claimants or their agent, (if known to be in this port;) and after invocation allowed to the captors, the claimants, by permission of the judge, for sufficient cause shown, may use other extracts of the same papers in explanation of the parts invoked.

**Rule 33.**—But when the same claimants intervene for different vessels, or for goods, wares, or merchandise captured on board different vessels, and proofs are taken in the respective causes, and the causes are on the dockets for trial at the same time, the captors may, on the hearing in court, invoke, of course, in either of such causes, the proofs taken in any other of them; the claimants, after such invocation, having liberty to avail themselves also of the proofs in the cause invoked.

**Rule 34.**—In all motions for commissions, and decrees of appraisement and sale, the time shall be specified within which it is prayed that the commissions or decree shall be made returnable.

**Rule 35.**—The commissioners shall make regular returns on the days in which their commission or decrees are returnable, stating the progress that has been made in the execution of the commission or decrees, and, if necessary, praying an enlargement of the time for the completion of the business.

**Rule 36.**—The commissioners shall bring in the proceeds which have been collected at the time of their returns; and they may be required from time to time to make partial returns of such sums only as are necessary to cover expenses.

**Rule 37.**—On the returns of commissions or decrees, the commissioners or the marshal must bring in all the vouchers within their control.

*Rule 38.*—All moneys brought into court in prize causes shall be forthwith paid into such bank, in the city of New York, as shall be appointed for keeping the moneys of the court, and shall only be drawn out on the specific orders of the court, in favor of the persons respectively having right thereto, or their agents or representatives, duly authorized to receive the same.

*Rule 39.*—At every stated term of the court, the clerk shall exhibit to the court a statement of all the moneys paid into court in prize cases, designating the amount paid in each particular case, and at what time.

*Rule 40.*—The statement, when approved by the court, shall be filed of record in the clerk's office, and be open to the inspection of all parties interested, and certified copies thereof shall be furnished by the clerk, on request, to any party in interest, his proctor or advocate.

*Rule 41.*—When property seized as prize of war is delivered upon bail, a stipulation, according to the course of the admiralty, is to be taken for double its value.

*Rule 42.*—Every claim interposed must be by the parties in interest, if within convenient distance—or in their absence, by their agent or the principal officer of the captured ship—and must be accompanied by a test affidavit, stating briefly the facts respecting the claim, and its verity, and how the deponent stands connected with or acquired knowledge of it. The same party who may intervene is also competent to attest to the affidavit.

*Rule 43.*—The captors of property brought in or held as prize, or which may have been carried into a foreign port, and there delivered upon bail by the captors, shall forthwith libel the same in fact, and sue out the proper process. The first process may, at the election of the party, be a warrant for the arrest of the property or person, to compel a stipulation to abide the decree of the court, or a monition.

*Rule 44.*—The monitions shall be made returnable in ten days, and if the property seized as prize is in port, shall be served in the same way as in the case of monitions issued on the instance side of the court of admiralty on seizures for forfeiture under the revenue laws. In case the property claimed as prize is not in port, then the monition is to be served on the parties in interest, their agent or proctor, if known to reside in the district, otherwise by publication daily in one of the newspapers of this city, for ten successive days preceding the return thereof.

*Rule 45.*—Whenever the jurisdiction of the court is invoked upon matters as incident to prize, except as to the distribution of prize-

money, there must be distinct articles or allegations in that behalf in the original libel or claim on the part of the party seeking relief. But in case the matters have arisen or become known to the party subsequent to presenting his libel or claim, the court will allow him to file the necessary amendments.

*Rule 46.*—No permission will be granted to either party to introduce further proofs until after the hearing of the cause upon the proofs originally taken.

*Rule 47.*—In case of captures by the public armed vessels of the United States, and a proceeding for condemnation against the property seized as prize *jure belli*, or in the nature of prize of war, under any act of Congress, the name of the officer under whose authority the capture was made must be inserted in the libel.

*Rule 48.*—A decree of contumacy may be had against any party not obeying the orders or process of the court, duly served upon him; and thereupon an attachment may be sued out against him. But no constructive service of a decree or process *viis et modis*, or *publica citatio*, will be sufficient, unless there has been a publication thereof in a daily paper in this city at least ten days immediately preceding the motion for an attachment.

*Rule 49.*—When damages are awarded by the court, the party entitled thereto may move for the appointment of three commissioners to assess the same; two persons approved by the court will thereupon be associated with a standing commissioner of the circuit court, the clerk or deputy clerk of this court, if not interested in the matter, whose duty it shall be to estimate and compute the damages, in conformity to the principles of the decree, and return a specific report to the court of the amount of damages, and the particular items of which they are composed.

*Rule 50.*—Any party aggrieved may have such assessment of damages reviewed in a summary manner by the court, before final decree rendered thereon, on giving two days' previous notice to the proctor of the party in whose favor the assessment is made, of the exceptions he intends taking, and causing to be brought before the court the evidence given the commissioners in relation to the particular excepted to.

*Rule 51.*—Every appeal from the decrees of this court must be made within ten days from the time the decree appealed from is entered, otherwise the party entitled to the decree may proceed to have it executed. No appeal shall stay the execution of a decree, unless the party, at the time of entering the appeal, gives a stipulation, with

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two sureties, to be approved by the clerk, in the sum of two hundred and fifty dollars, to pay all costs and damages that may be awarded against him, and to prosecute the appeal to effect.

*Rule 52.*—If the party appealing is afterwards guilty of unreasonable delay in having the necessary transcripts and proceedings prepared for removing the cause, it will be competent to the other party to move the court for leave to execute the decree, notwithstanding the appeal.

*Rule 53.*—In all cases of process *in rem*, the property after arrest is deemed in the custody of the court, and the marshal cannot surrender it on bail, or otherwise, without the special order of the court.

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## STANDING INTERROGATORIES.

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## STANDING INTERROGATORIES.

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[The following are the standing interrogatories referred to in the foregoing prize rules :]

*Standing interrogatories to be administered by a prize commissioner to all persons that may be produced as witnesses to be examined in preparatorio, in relation to any ship or vessel, goods, wares, or merchandise, which may be captured or taken as prize and brought into the southern district of New York.*

Let each witness be interrogated to every of the following questions, and their answers to each interrogatory be written down under his direction and supervision :

1. Where were you born, and where do you now live, and how long have you lived there? Of what prince or state are you a subject or citizen, and to which do you owe allegiance? Are you a citizen of the United States of America? Are you a married man, and, if married, where do your family and wife reside?

2. Were you present at the capture or taking of the vessel, or her lading, or any of the goods or merchandises concerning which you are now examined?

3. When and where was such seizure and capture made, and into what place or port were the same carried? Had the vessel so captured any commission, or letters, authorizing her to make prizes? What and from whom? For what reasons or on what pretence was the seizure made?

4. Under what colors did the captured vessel sail? What other colors had she on board, and for what reason had she such other colors?

5. Was any resistance made at the time of the capture, and by whom? Were any guns fired, how many, and by whom? By what ship or ships was the capture made? Were any other and what ships in sight at the time of the capture? Was the vessel captured a merchantman, a ship-of-war, or acting under any commission as a privateer or letter of marque and reprisal, and to whom did such vessel



belong? Was the capturing vessel a ship-of-war, a letter of marque and reprisal, or privateer, and of what force?

6. Had the capturing vessel or vessels any commission to act in the seizure or capture of the vessel inquired about, and from whom, and by what particular vessel was the capture made? Was the vessel seized condemned, and if so, when and where, and for what reason, and upon what account, and by whom, and by what authority or tribunal was she condemned?

7. What was the name of the vessel taken, and of her master or commander? Who appointed him to the command of the said vessel, and where? How long have you known the vessel and him, and when and where did he take possession of her, and who by name delivered the same to him? Where is the fixed place of abode of the master, with his wife and family, and how long has he lived there? If he has no fixed place of abode, where was his last place of residence, and how long did he live there? Where was he born? Of what country or state is he a subject or citizen?

8. Of what tonnage or burden is the vessel which has been taken, and about which you are examined? What number of the vessel's company belonged to her at the time she was seized and taken, and how many were then actually on board her? What countrymen are they? Did they all come on board at the same port and time, or at different ports and times, and when and where? Who shipped or hired them, and when or where?

9. Did you belong to the company of the vessel so captured at the time of her seizure, and in what capacity? Had you, or any of the officers, or mariners, or company, belonging to the said vessel at the time of her capture, any part, share, or interest in the same, or in the goods or merchandise laden on board her, and what in particular, and what was the value thereof at the time the said vessel was captured, and the said goods seized?

10. How long have you known the said vessel? When and where did you first see her? How many guns did she carry? How many men were on board of her at the beginning of the engagement, before she was captured? Of what country build was she? What was her name, and how long was she so called? Whether do you know of any other name she was called by, and what were such names, as you know or have heard?

11. To what ports and places was the vessel, concerning which you are now examined, bound on the voyage wherein she was taken and seized? Where did the voyage begin, and where was the voyage to

have ended? What sort of lading did she carry at the time of her first setting out on the voyage, and what particular sort of lading and goods had she on board at the time she was taken and seized? In what year and in what month was the same put on board? Do you or not know she had on board during her last voyage, and when, goods contraband of war, or otherwise prohibited by law, and what goods?

12. Had the vessel of which you are examined any passport or sea-brief on board, and from whom? To what ports or places did she sail during her last voyage, before she was taken? Where did her last voyage begin, and where was it to have ended? Set forth the kind of cargoes the vessel has carried to the time of her capture, and at what ports such cargoes have been delivered. From what ports, and at what time, particularly from the last clearing port, did the said vessel sail, previously to the capture?

13. What lading did the vessel carry at the time of her first setting sail in her last voyage, and what particular sort of lading and goods had she on board at the time she was taken? In what year and in what month was the same put on board? Set forth the different species of the lading and the quantities of each sort.

14. Who were the owners of the vessel and goods, concerning which you are now examined, at the time of their capture and seizure? How do you know they were owners thereof at that time? Of what nation or country are they by birth, and where do they live with their wives and families? How long have they resided there? Where did they reside previously, to the best of your knowledge? Of what country or state are they subjects or citizens?

15. Was any bill of sale given, and by whom, to the owners of the said vessel, and in what month and year? Where, and in presence of what witnesses, was it made? Was any, and what engagement entered into concerning the purchase, further than what appears upon the bill of sale? Where did you last see it, and what has become of it?

16. In what port or place, and in what month and year, was the lading found on board the vessel, at the time of her capture or seizure, first put on board her? What were the names of the respective laders or owners, or consignees thereof? What countrymen are they? Where did they reside before, to the best of your knowledge, and where were the said goods to be delivered, and for whose real account, risk, or benefit? Have any of the said laders or consignees any and what interest in the said goods? What were the several qualities, quantities, and particulars of the said goods, and have you any and

what reason to know or fully believe that if the said goods shall be restored and unladen at the destined ports, they did, do, and will belong to the same persons, and to none others.

17. How many bills of lading were signed for the goods seized on board the said vessel? Were any of those bills of lading false or colorable, or were any bills of lading signed which were different in any respect from those which were on board the vessel at the time she was taken? What were the contents of such other bills of lading, and what became of them?

18. Have you in your possession, or were there on board of the said vessel, at the time of her capture, any bills of lading, invoices, letters, or other writings, to prove or show your own interest, or the interest of any other person, and of whom, in the vessel or in the goods concerning which you are now examined? If in your power produce the same, and set forth the particular times when, where, and in what manner, and upon what consideration, you became possessed thereof. If you cannot produce such paper evidences, then state in whose possession you last saw them, or where you know or believe they are kept, and when, and by whom they were brought or sent within this district, and also set forth the contents or purport of such papers.

19. State the degrees of latitude and longitude in which the said vessel and her cargo were captured, as also the year, month, and day, and time thereof, in which such seizure was made, and in or near what port or place, and whether it was a port of any State or Territory of the United States of America, and what one. Was any charter-party for the voyage upon which the said vessel was captured signed and executed, and by whom and when? If in your possession, produce the same. If not, set forth its contents and state what has become of it.

20. What papers, bills of lading, letters, or other writings relating to the vessel or cargo, were on board the vessel at the time she took her departure from her last clearing port, before she was taken as prize? Were any of them burnt, torn, thrown overboard, destroyed, or cancelled, or attempted to be concealed, and when, and by whom, and who was then present?

21. Did you or the owner, master, or person having command of the said vessel or her navigation, at the time and place of her capture, know or have notice that such place or port was in a state of war with the United States, and that the naval forces of the United States held such port in a state of blockade? How, when, or where had you such

knowledge or notice, and when and where did the master or commandant of said vessel obtain it?

22. Was such port under an order of blockade by the government of the United States, at the time the said vessel entered or made an attempt to enter the same? Had warning or notice of such blockade been given to, or received by the owner, master or commandant of said vessel, before or at the time she entered, or attempted to enter the said port, and when, and in what manner? Had notice in writing been indorsed on the register or other ship's papers of the said vessel, and when, where, and by whom, of an existing blockade of such port, before she entered, or attempted to enter the same, or before the time of her sailing, or attempting to sail therefrom?

23. Was the register of the vessel, about which you are examined, shown to, or examined by any officer of the United States navy, or by any revenue officer of the United States, before she was captured and taken, and before she entered the port at, or near which, she was taken and seized, and was the register, or other ship's papers, indorsed by said United States officer? Declare fully all you know, or have reason to believe, respecting this interrogatory, stating the persons, times, and places connected therewith.

24. Do you know, or do you believe from information, and if the latter, from what information, and when and how was it obtained, that the vessel inquired about, at any time or times, after the blockade of the said port, and with notice thereof, and when, attempted covertly and secretly to enter the said blockaded port, or to sail therefrom, without success? Disclose fully all your knowledge, information, and belief thereon, with the particulars upon which the same is founded.

25. Has the vessel, concerning which you are now examined, been at any time, and when, seized as prize and condemned as such? If yea, set forth into what port she was carried, and by whom, and by what authority, or on what account she was condemned.

26. Have you sustained any loss by the seizing and taking the vessel concerning which you are now examined? If yea, in what manner do you compute such your loss? Have you already received any indemnity, satisfaction, or promise of satisfaction, for any part of the damage which you have sustained, or may sustain, by this capture and detention, and when and from whom?

27. Is the said vessel or goods, or any, and what parts, insured? If yea, for what voyage is such insurance made, and at what premium, and when and by what persons, and in what country was such insurance made?

28. In case you had arrived at your destined port, would your cargo, or any part thereof, on being unladen, have immediately become the property of the consignees, or any person, and whom? Or was the lader to take the chance of the market for the sale of his goods?

29. Let each witness be interrogated of the growth, produce, and manufacture, on board the vessel. Of what country and place was the lading, concerning which they are now interrogated, or any part thereof?

30. Whether all the said cargo, or any and what part thereof, was taken from the shore, or quay, or removed, or transhipped from one vessel to another, from what and to what shore, quay, and vessel, and when and where was the same so done?

31. Are there in any country besides the United States, and where, or on board any and what vessel, or vessels, other than the vessel concerning which you are now examined, any bills of lading, invoices, letters, instruments, papers, or documents, relative to the said vessel or cargo, and of what nature are they, and what are their contents?

32. Were any papers delivered out of the said vessel, and carried away in any manner whatsoever, and when, and by whom, and to whom, and in whose custody, possession, or power do you believe the same now are?

33. Was bulk broken during the voyage on which you were taken, or since the capture of the said vessel, and when, and where, by whom, and by whose orders, and for what purpose, and in what manner?

34. Were any passengers on board the aforesaid vessel? Were any of them secreted at the time of the capture? Who were the passengers by name? Of what nation, rank, profession, or occupation? Had they any commission—for what purpose, and from whom? From what place where they taken on board, and when? To what place were they finally destined, and upon what business? Had any, and which of the passengers, any and what property, or concern, or authority, directly or indirectly, regarding the vessel and cargo? Were there any officers, soldiers, or mariners secreted on board, and for what reason were they secreted? Were any citizens of the United States on board, or secreted or confined at the time of the capture? How long, and why? Whether any persons on board the said vessel, at the time of her capture, were citizens or residents of any State or Territory of the United States then in a state of war or rebellion against the United States, its government and laws. If so, who by name, and of what State or Territory? What was their employment on board the vessel, and what their destination?

35. Were and are all the passports, sea-briefs, charter-parties, bills of sale, invoices, and papers which were found on board, entirely true and fair, or are any of them false or colorable? Do you know of any matter or circumstance to affect their credit? By whom were the passports or sea-briefs obtained, and from whom? Were they obtained for this vessel only, and upon the oath or affirmation of the persons therein described, or were they delivered to or on behalf of the person or persons who appear to have been sworn or to have affirmed thereto without their having ever, in fact, made any such oath or affirmation? How long a time were they to last? Was any duty or fee payable and paid for the same, and is there any duty or fee to be paid on the renewal thereof? Have such passports been renewed, and how often, and has the duty or fee been paid for such renewal? Was the vessel in a port in the country where the passports and sea-briefs were granted; and if not, where was the vessel at the time? Had any person on board any passport, license, or letters of safe conduct? If yea, from whom, and for what business? If it should appear that there are in the United States, or in any other place or country besides the United States, any bills of lading, invoices, instruments, or papers relative to the vessel and goods concerning which you are now examined, state how they were brought into such place or country. In whose possession are they, and do they differ from any of the papers on board, or in the United States, or elsewhere, and in what particular do they differ? Have you written or signed any letters or papers concerning the vessel and her cargo? What was their purport? To whom were they written and sent, and what has become of them?

36. Towards what port or place was the vessel steering her course at the time of her being first pursued and taken? Was her course altered upon the appearance of the vessel by which she was taken? Was her course at all times, when the weather would permit, directed to the place or port for which she appears to have been destined by the ship papers? Was the vessel, before or at the time of her capture, sailing beyond or wide of the said place or port to which she was so destined by the said ship papers? At what distance was she therefrom? Was her course altered at any, and what time, and to what other port or place, and for what reason?

37. By whom and to whom hath the said vessel been sold or transferred, and how often? At what time and at what place, and for what sum or consideration, has the same been paid or satisfied? Was the sum paid, or to be paid, a fair and true equivalent, or what security or securities have been given for the payment of the same; and by whom,

and where do they now live? Do you know, or believe in your conscience, such sale or transfer has been truly made, and not for the purpose of covering or concealing the real property. Do you verily believe that if the vessel should be restored, she will belong to the persons now asserted to be the owners, and to none others?

38. What guns were mounted on board the vessel, and what arms and ammunition were belonging to her? Why was she so armed? Were there on board any other guns, weapons, warlike arms, or armament of any name or description, and if any, what? Were there any parts of warlike arms, not put together or finished, or any ammunition, fixed or unfixed, or any balls, shells, rockets, hand-grenades, flints, percussion caps, or any other thing known to be intended for military equipment? Were there any belts, ball-moulds, saltpetre, nitre, camp equipage, military tools, uniforms, soldiers' clothing, or accoutrements, or any parts of them, or any sort of warlike or naval stores? Were any of such warlike or naval stores, or things, thrown overboard to prevent suspicion at the time of the capture; and were any such warlike stores, before described, concealed on board under the name of merchandise, or any other colorable appellation, in the ship papers? If so, what are the marks on the casks, bales, and packages in which they were concealed? Are any of the before-named articles, and which, for the sole use of any fortress or garrison in the port or place to which such vessel was destined? Do you know, or have you heard of any ordinance, placard, or law, existing in such country or State forbidding the exportation of the same by private persons without license? Were such warlike or naval stores put on board by any public authority? When and where were they put on board?

39. What is the whole which you know or believe, according to the best of your knowledge and belief, regarding the real and true property and destination of the vessel and cargo concerning which you are now examined, at the time of the capture?

40. Did the said vessel, on the voyage in which she was captured, (or on) or during any or what former voyage or voyages, sail under the convoy of any ship or ships of war, or other armed vessel or vessels? For what reason or purpose did she sail under such convoy? Of what force was or were such convoying ship or ships, and to what state or country did the same belong? What instructions or directions had you or did you receive on each and every of such voyages, when under convoy, respecting your sailing or keeping in company with such armed or convoying ship or ships; and from whom did you receive such instructions or directions? Had you any, and what directions or

instructions, and from whom, for resisting, or endeavoring to avoid or escape from capture, or for destroying, concealing, or refusing to deliver up your vessel's documents and papers; or any, and what other papers, that might be or were put on board your said ship? If so, state the tenor of such instructions and all particulars relating thereto. Are you in possession of such instructions, or copies thereof? If so, leave them with the commissioner, to be annexed to your deposition.

41. Did the said vessel, during the voyage in which she was captured, or on making any and what former voyage or voyages, sail to, or attempt to enter, any port under blockade by the arms or forces of any, and what, belligerent power? If so, when did you first learn or hear of such port being so blockaded, and were you at any, and what time, and by whom warned not to proceed to, or to attempt to enter into, or to escape from, such blockaded port? What conversation or other communication passed thereon? And what course did you pursue upon and after being so warned off?

42. Whether or no the vessel, concerning which you are examined, did sail on her last voyage prior to her seizure, carrying a commission or license as a privateer, or letter of marque and reprisal, or other authority from any person or persons, to cruise against the persons or property of citizens of the United States, and to make prizes thereof. By whom was such authority, license, or direction given, and when? Was it in writing? If so, did it remain with the vessel up to the time of her capture, or was it destroyed or concealed previous thereto? When, and by whom? What were the contents or purport thereof? State all the facts in your knowledge within this inquiry, and the sources of such knowledge. Also state fully all the acts known to you to have been done by the vessel, her master or crew, under such commission or license, up to the period of her capture.

43. Whether or no the said vessel inquired about, at any time, and when and where, sailed or acted in company or concert with any other armed vessel or vessels, and what, in cruising against, pursuing, or seizing as prize, any persons, vessels, or property of citizens of the United States? Declare fully and particularly your knowledge, information, and belief therein.





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1. An appeal to the Supreme Court from the decree of this court in a prize cause removes the cause from this court, and places the prize property exclusively under the control of the appellate tribunal. *The Peterhoff*, 620.  
 2. Pending such an appeal, this court refused to order the costs of the prize commissioner to be paid out of the funds in this case. *Id.*  
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1. An appraiser appointed by the court, on the application of the claimant, to appraise the prize property, with a view to its delivery on bail to the claimant, not having been paid his compensation, applied to the court to tax his costs for the service, and direct them to be paid out of the proceeds of the property, but the application was denied. *The Sally Magee*, 596.
2. The charges of appraising and bonding such property must be borne by the party who applies to have it bonded. *Id.*
3. The appraiser having charged one per cent. on the value of the property appraised, and the prize commissioners having reported that one-half of that amount would be a proper compensation: *Held*, that the appraiser had no right to demand a *quantum meruit* for his services, or any further reward than the *per diem* allowance provided by statute or the standing rules of the court for that description of services. *Id.*

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1. It is competent for any person to take possession of property seizable as prize when found within the jurisdiction of the court. *The Tropic Wind*, 64.
  2. The vessel and cargo were seized in Hampton Roads, near Fortress Monroe, by Major General Butler, of the army, and sent to New York and there libelled as prize: *Held*, that the arrest was legal, and the suit regularly instituted. *Id.*
  3. Where an offence against the prize law has been committed, the vessel or cargo may be arrested anywhere at sea, or within the dominions of the capturing power, and by any person, officer, or citizen, as property belonging to the government. *The Prince Leopold*, 89.
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**Auctioneer.**

1. The marshal is not authorized to appoint an auctioneer to conduct a judicial sale, at the expense of the government or of a private party, without the consent of the party for whose benefit the service is performed. *The Tubal Cain*, 347.
2. Any custom or usage to that effect rests only on the direct consent of the party using the process of sale. *Id.*
3. An auctioneer cannot have costs or disbursements taxed in his favor by the court, *in invitum*, against the libellants or claimants personally, or against the *res*, nor can the auctioneer's charges be taxed to the marshal as a part of his disbursements. *Id.*

**B.****Bail.**

1. The cargo having been delivered to the claimants on bail before hearing, it afterwards appeared that it had been appraised at less than its real value, and that the security was in too small an amount. A motion was made that the cargo be restored to the custody of the court, but it appearing that it was no longer in the possession of the claimants or the bail, but had passed to *bona fide* purchasers, the court awarded monitions against the claimants to pay into court the difference in amount between the proceeds or value of the cargo delivered to them and the amount of the bail. *The Lynchburg*, 57.
2. Property seized as prize may be pursued *in rem* into the hands of all persons who become possessed of it, or by monition against such persons, if its proceeds have been brought into court. *Id.*
3. It matters not whether the prize goods remain in kind or have been disposed of *bona fide* by sale. The holder of the thing or of its proceeds may be compelled, by monition, to deliver the same into court, to be there disposed of according to the rights of the captors. *Id.*
4. And this may be done as against persons having the proceeds of prize property in their hands, when an insufficient stipulation has been taken, on a delivery on bail. *Id.*

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**Blockade.**

1. The act of July 13, 1861, (12 U. S. Statutes at Large, 255,) "further to provide for the collection of duties on imports, and for other purposes," did not rescind the prior proceedings of the President in authorizing acts of war by the United States or in establishing blockades of the enemy's ports, or make void captures previously made for violations of such blockades. *The Hiawatha*, 1.
2. A blockade of the enemy's ports is as lawful a means of war, in civil warfare, as it is in a war between nations foreign to each other. *Id.*
3. Under the proclamation of blockade of April 19, 1861, it is not necessary to the lawfulness of the capture of a vessel seized for violating the blockade, that a warning should have been previously inducted on her register, where, at the time of capture, she had entered into or escaped from the blockaded port, or possessed knowledge or notice of the blockade. *Id.*
4. A notice of a blockade to the officials of a neutral government is a sufficient notice of it to the subjects of such government. *Id.*
5. The act of egress is as culpable as the act of ingress, when done in fraud of a blockade. *Id.*
6. On notice of a blockade, a neutral vessel has a right to withdraw from the blockaded port, with all the cargo honestly laden on board before the commencement of the blockade. *Id.*
7. The acts of a master in breach of a blockade affect the cargo equally with the vessel, if the cargo is laden on board after the blockade has become effective as to the vessel. *Id.*
8. A warning on the register of a vessel is not necessary to establish notice of a blockade where actual notice of it to the master or owner is satisfactorily made out otherwise. *Id.*

9. Vessel condemned for violating the blockade after notice of its existence to her master. *The Crenshaw*, 2.
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11. A part of the cargo restored, being the property of neutrals who had no notice of the blockade, but no costs allowed against the captors. *Id.*
12. A vessel approaching a blockaded port, with intent to violate the blockade, is not entitled to be warned off. *The Hallie Jackson*, 2.
13. In the absence of notice of a blockade, an inquiry at a blockaded port excused. *The Forest King*, 2.
14. An entry into a blockaded port to obtain necessary supplies excused. *Id.*
15. To constitute a blockade of a port, an adequate force must be stationed to render the entrance or departure of vessels into or from the port dangerous. *The Sarah Starr*, 69.
16. In order to affect a neutral with the penal consequences of a violation of a blockade, it is necessary for him to have been sufficiently informed of its existence. *The Louise Agnes*, 107.
17. An attempt by a neutral vessel to enter or evade a blockaded port, with knowledge or notice of the blockade, is a culpable violation of it, although no warning in writing is given to such vessel. *Id.*
18. If a vessel approaches a blockaded port with knowledge of the blockade, and with the intention of violating it, her subsequent departure under the compulsory direction of a blockading cruiser does not reintegrate her to the state of an innocent trader, and she may still be arrested for the offence. *Id.*
19. An attempt, on the part of a neutral owner, to mislead a blockading force by a deceptive representation on his vessel's papers, amounts to fraudulent misconduct, which justifies the confiscation of the vessel. *Id.*
20. Every dissimulation in the papers will, in the judgment of a prize court, be regarded as intended to conceal what could not be safely disclosed, and as affording evidence that the destination of the vessel was falsified with a design to defraud. *Id.*
21. A fraudulent attempt to violate a blockade warrants a condemnation, although the claimant may be able to show that the captors have been guilty of irregularities and wrongs towards the prize or its ship's company subsequent to capture. *Id.*
22. The true destination of the vessel in this case was not disclosed upon her papers. The defence set up that the vessel made inquiry at a neutral port as to the blockade, and was informed that it had been raised, and then directed her course towards a blockaded port in order to make inquiry there as to the existence of the blockade before attempting to enter, shown to be groundless. *The Delta*, 133.
23. A contingent destination to a blockaded port, if it in fact existed, must appear on the ship's papers. *Id.*
24. Where knowledge of a blockade exists at the commencement of the voyage of a vessel, she cannot lawfully approach a blockaded port, even for the *bona fide* purpose of inquiring as to the continuance of the blockade; and, if she does, she is liable to capture. *Id.*
25. A contingent destination to a blockaded port must appear on the ship's papers; otherwise it will be presumed that there was a dishonest purpose in approaching such port. *The Cheshire*, 151.
26. In this case there was positive evidence of such dishonest purpose. The alleged purpose of making inquiry as to the raising of the blockade was a mere pretence. *Id.*
27. A neutral vessel, with knowledge of the existence of a blockade, has no right to proceed to a blockaded port with the purpose of inquiring there as to the continuance of the blockade. The inquiry must be made elsewhere than at the mouth of the port itself. *Id.*
28. A clear necessity will justify an entrance into a blockaded port, but satisfactory evidence will be required of the reality and urgency of the necessity. *The Major Barbours*, 167.
29. Formerly, the act of sailing for a blockaded port, with knowledge of the blockade, was itself evidence of an attempt to evade the blockade; but now the law is that some overt act, denoting the forbidden attempt, must be shown in addition to the intention. *The Empress*, 175.
30. Sailing purposely for a blockaded port, with the intention properly notified on the ship's papers or otherwise fairly disclosed, may be excused in a neutral vessel, if the object is honestly to inquire elsewhere whether the blockade still continues, and, if so, to avoid the blockaded port and complete the voyage at a lawful one. *Id.*
31. The inquiry cannot lawfully be made at the blockaded port if it can be made elsewhere. *Id.*
32. Under the President's proclamation of April 19, 1861, establishing a blockade pursuant to "the law of nations," a neutral vessel, knowing a port to be under blockade and sailing towards it with intent to evade such blockade, is subject to capture without being warned off by the blockading vessels. *Id.*
33. In this case the vessel, with knowledge of the blockade and of its continuance, entered within the line of the blockading vessels with intent to pursue her voyage towards the blockaded port until she should be warned off. *Id.*
34. The court will take judicial notice of the notorious course of trade between the neutral port of Nassau and the blockaded ports of the enemy. *The Mercury*, 187.
35. Suspicious circumstances as to the destination of the vessel commented on. *Id.*
36. A settled course of trade in violating the blockade, and the employment of the vessel before in such trade, and the fact that her claimant had before been engaged in such trade, taken into consideration in deciding this case. *The William H. Northrop*, 235.
37. A seizure of a vessel for the violation of a blockade is lawful, if made by a national vessel, though not made by a vessel forming a part of the blockading force. *The Memphis*, 260.

38. Purchase of vessel from an enemy during the war by a resident in a neutral country with intent to employ her in violating the blockade. *The Albert*, 282.
39. The vessel came out of a blockaded port clandestinely on the voyage next preceding the one on which she was captured. *The Maria*, 283.
40. She knowingly attempted to violate the blockade on the voyage on which she was captured. *Id.*
41. The vessel was captured while attempting to violate the blockade. *The Ella Warley*, 288.
42. She violated the blockade on the voyage next preceding the one on which she was captured. *Id.*
43. The offence of attempting to violate a legal blockade is not consummated merely by the existence of a purpose to commit the act, but the vessel must be intercepted while endeavoring to carry out the guilty design. *The John Gilpin*, 291.
44. However earnestly the criminal intent may have been entertained and proceeded upon for a time, if it be really given up before the arrest the property is not liable to confiscation because of the previous wrongful purpose. *Id.*
45. A vessel setting out with the object of evading a legal blockade will be relieved from the penalty following her detection in seemingly adhering to that purpose in her doings, only upon clear evidence that at the time of capture the fraudulent and guilty intention had been wholly relinquished. *Id.*
46. It is not the mere mental design which the law punishes, but the overt act in starting for or proceeding towards the prohibited port with the knowledge that it is blockaded, and continuing on that course up to the arrest. *Id.*
47. In this case the vessel and cargo were not in the act of attempting to violate the blockade when captured. *Id.*
48. The vessel, on her voyage next preceding the one on which she was captured, had violated the blockade. *The Belle*, 294.
49. She was laden and virtually owned by parties notoriously actively concerned during the war in carrying on an illicit trade with the blockaded ports of the enemy. *Id.*
50. Where it is claimed that a vessel was compelled to attempt to enter a blockaded port by an overwhelming necessity, arising from injuries received at sea, and the loss of fuel, water, and provisions, the burden lies upon her to establish the necessity. *The Sunbeam*, 316.
51. Violation of the blockade by the vessel on previous voyages. *The Granite City*, 355.
52. In the case of a vessel seized as prize by reason of her having violated a blockade, or been used by the enemy for warlike purposes, it is of no consequence that she was so employed without the knowledge or approbation of her owner. *The Napoleon*, 357.
53. In time of war, a neutral vessel is subject to forfeiture if run into a blockaded port by her commander, independently of proof of instructions by or actual intention on the part of her owner to evade the blockade, he having previous due notice of its existence and efficiency. *Id.*
54. The court overruled the defences set up by the claimants, namely, that the blockade of the port of Wilmington, N. C., was not efficient, and that a vessel-of-war of the United States, not stationed in guard of a blockaded port, had no right to seize a vessel violating such blockade. *The Douro*, 362.
55. This vessel was seized as prize and taken to Key West, and released by the prize court there on bonds, and permitted to proceed on her voyage. She was afterwards arrested again as prize, for an alleged attempt to violate the blockade after leaving Key West: *Held*, that her release at Key West did not absolve her from her obligation not to violate the blockade afterwards. *The Rising Dawn*, 368.
56. Approaching a blockaded coast from necessity. *Id.*
57. In this case the neutral consignee, at a neutral port, of a cargo delivered there by a vessel which had brought it from a blockaded port of the enemy, in violation of the blockade, acquired a perfect title to it, as against persons who captured it as prize on its subsequent transportation on a neutral vessel, from such neutral port to another neutral port. *The Isabelle Thompson*, 377.
58. Acting on the persuasion that the cargo had been unlawfully brought from a blockaded port, and had been directly laden from the first vessel into the second vessel, the captors acted properly in bringing in the latter vessel and her cargo for adjudication. *Id.*
59. Had any solidarity of interests between the two vessels, in the entire voyage from the enemy port to the last neutral port, been established by the proofs, or any complicity between them in the enterprise, the captors might well invoke the judgment of the court in condemnation of the enterprise. *Id.*
60. The course of trade during the present war, in regard to running the blockade from neutral ports in the vicinity of the enemy's country, commented on. *The Stephen Hart*, 387.
61. *Held*, on the evidence, that the cargo of the vessel was intended, on its departure from England, to be carried into the enemy's country for the use of the enemy, by a violation of the blockade of some one of the enemy's ports, either in that vessel or in another vessel into which the cargo was to be trans-shipped, for the purpose of being transported by sea to the enemy's country. *Id.*
62. The cargo of the vessel was intended to be delivered in the enemy's country, by trans-shipment, at Nassau, into a vessel in which it should be carried through the blockade; and such was the intended destination of the cargo on its departure from England. *The Springbok*, 434.
63. A lawful blockade had been imposed by this government, and put in force, at the time of the arrest of the vessel in this suit. *The Mary Clinton*, 556.
64. The proclamation of blockade is, of itself, conclusive evidence that a state of war existed which demanded and authorized a recourse to a blockade, under the circumstances existing in the case. *Id.*

65. Where the owner of a vessel and her master are aware of the existence of a blockade at the time the vessel sails on her voyage, and have no reason to believe that it has subsequently ceased, the vessel has no right to approach the blockaded port for the purpose of ascertaining whether the blockade is still in force. *The Chesire*, 643.
66. Under the proclamation of blockade of the President of April, 1861, as construed by the Supreme Court, a neutral vessel is not entitled to a warning at the blockaded port, if her owner or master had previous knowledge or notice of the existence of the blockade; but, in the absence of such knowledge or notice, the master is entitled to make inquiry and receive the warning before condemnation can take place. *The Delta*, 654.
67. The pretence that the vessel sought the blockaded port in distress overruled. *The Sunbeam*, 656.
68. Part of the cargo was an innocent shipment, and neither the owner of it nor any of his agents were implicated in the fault of the vessel. But, in case of a blockade, the general rule is, that the deviation of the vessel into the blockaded port is presumed to be in the service of the cargo, and that the owner is bound by it, except in the absence of notice of the blockade at the time the vessel sailed. In this case there was no such want of notice. *Id.*
69. The purpose of the master in approaching the blockaded port was to inquire whether it was actually blockaded. *The Empress*, 659.
70. Under the circumstances of this case, the master was justified in making such inquiry. *Id.*
71. The master thought he would be entitled to a warning from a blockading vessel before a forfeiture would be enforced, and acted on such a construction of the President's proclamation of blockade, and on directions to that effect contained in the charter-party for the voyage, and in the instructions to him from the charterers, although he had good reason to believe that the port was in a state of actual blockade. *Id.*
72. Although the terms of the proclamation afford no justification for the act of the master, they are entitled to consideration on the question of the intent with which the master was sailing for the blockaded port. *Id.*
73. Although the general rule may be that, even in the case of a blockade *de facto*, such as the present was, the inquiry must not be made at the blockaded port, if it be reasonably practicable to ascertain the fact by inquiry at a neutral port; yet there are exceptions to that rule, and this case is one of them. *Id.*
74. The excuse set up, that the vessel sought the blockaded port under stress of weather, overruled. *The Albert*, 663.
- See CAPTURE, 6.**
- CASES COMMENTED ON, 3.**
- CONDEMNATION, 7, 8, 18 to 21, 23 to 27, 30 to 33, 35 to 39, 41, 44 to 47, 49, 50, 52, 56 to 59, 61 to 68, 70 to 73, 76 to 86, 88, 93 to 96, 98 to 106, 108, 109 to 124, 126, 127, 129, 131, 132, 134, 135 to 139, 142, 143 to 154, 156 to 158, 160, 161, 163 to 165, 167 to 170.

**See CONTRABAND OF WAR, 3, 8.**

ENEMY, 13 to 15, 35, 37.

EVIDENCE, 4, 5, 16, 26.

FURTHER PROOF, 1 to 3, 5, 10.

LIEN, 7.

PAPERS, 16.

PLEADING, 4.

PRACTICE, 16.

PRIZE MONEY, 1 to 10.

RESTORATION, 3, 5, 6, 11, 13, 19, 25, 27 to 29, 32, 33.

SPOILIATION, 13, 18.

UNITED STATES.

VESSEL, 4.

WAR, 4.

#### Bona Fide Purchaser.

**See BAIL, 1, 3.**

CONDEMNATION, 52.

ENEMY, 6, 7, 10.

NEUTRAL, 8, 9.

#### Bond.

**See APPRAISER.**

BLOCKADE, 55.

COSTS, 14.

#### C.

##### Captor.

1. Where a combined action exists between vessels-of-war and land forces in making a capture, it is usually cast upon the latter to prove that their co-operation was direct and positive, to authorize their sharing in the prize, and they are not ordinarily recognized as joint captors unless it is proved on their part that the capture was produced by their active interference. 282 *Bales of Cotton*, 302.

**See BAIL, 3, 4.**

BLOCKADE, 21, 57 to 59, 13.

CAPTURE, 1, 9 to 11.

COSTS, 1, 3 to 6, 11 to 13.

DAMAGES, 1.

DISTRICT ATTORNEY, 9.

ENEMY, 5.

EVIDENCE, 1, 2, 5, 9, 23.

FREIGHT, 2 to 4.

FURTHER PROOF, 1, 2.

JURISDICTION, 3, 9.

PRACTICE, 7 to 9, 11 to 13, 15, 49.

PRIZE MONEY, 8, 12, 13.

RESTORATION, 4, 5, 8, 18.

##### Capture.

1. The omission of the captors of a vessel to bring in the captured crew will not inure to defeat a capture by a government vessel. *The Shark*, 215.
2. A vessel guilty of an unlawful trade with the enemy is liable to capture for the offence at any time during the voyage in which the offence is committed. *The Memphis*, 260.
3. An objection that this vessel, seized by naval forces in the harbor of Beaufort, North Carolina, after its capture, and while that place was in custody of the army of the United States, was not subject to capture solely by the naval forces, overruled. *The Gondar*, 266.

4. If the vessel arrested as prize was acting in violation of public law, she is amenable to trial and condemnation therefor in behalf of the United States, whether the persons or means employed in making the seizure had authority to make it or not. *The Ouchita*, 306.
  5. It is enough that the government comes into the national court demanding the condemnation of an offender; and the court never inquires whether the party or thing proceeded against has been regularly or irregularly brought under attachment or complaint. *Id.*
  6. The instructions of the Navy Department of the United States to the naval commanders of the United States of August 18, 1862, that a vessel is not to be seized "without a search carefully made, so far as to render it reasonable to believe that she is engaged in carrying contraband of war for or to the insurgents, and to their ports directly, or indirectly by trans-shipment, or otherwise violating the blockade," are in accordance with settled public law. *The Stephen Hart*, 387.
  7. This vessel and cargo were captured at sea by a vessel employed as a transport in the service of the United States, but not a commissioned vessel-of-war. *The Emma*, 561.
  8. The filing by the United States of a libel against the vessel and cargo as prize is an affirmation by the United States of the capture, and such ratification is equivalent to an original seizure by authority of the government. *Id.*
  9. The distinction stated between the effects of a capture of property on land by a belligerent and of a capture of prize property at sea. *The Peterhoff*, 620.
  10. In the former case the title passes as soon as the capture is complete. In the latter the right of property remains unchanged until a final decree of condemnation by the courts of the country of the captors. *Id.*
  11. All captures made by public armed vessels belong to the government and no title exists in the captors, except to their distributive shares of the proceeds after condemnation. *The Aigburth*, 635.
- See ARREST.
- BLOCKADE, 1, 3, 21, 24, 32, 40 to 48, 54, 55, 57 to 59.
- CAPTOR.
- CARGO, 4.
- CLAIM, 2.
- CONDEMNATION, 26, 28, 40, 52, 100, 113, 125 to 127, 140, 151.
- CONFISCATION, 5.
- CONTRABAND OF WAR, 3, 14, 23, 27.
- ENEMY, 1, 4, 5, 9, 21, 22, 27, 28, 30, 35 to 37.
- EVIDENCE, 1, 2, 9 to 12, 15, 37, 38.
- FURTHER PROOF, 4, 5, 12.
- JURISDICTION, 2 to 4, 8 to 10, 12.
- LIEN, 4.
- MASTER, 3.
- NEUTRAL, 3, 4, 12 to 18.
- PLEADING, 7.
- PRACTICE, 19 to 21, 37 to 42, 45 to 47.
- PRIZE MONEY, 1 to 10, 12.
- PROBABLE CAUSE.
- RESTORATION, 2, 16, 17, 21, 24.
- SPOILIATION, 17, 20, 24.

### Cargo.

1. In contemplation of law, the cargo in this case became the property of the consignees from the time of its being laden on board of the vessel and from the execution of the bills of lading therefor. *The Sally Magee*, 382.
  2. The letters of instruction found on board of the vessel, and the absence of any manifest, bills of lading, or invoices, commented on as affecting the question of the destination of her cargo. *The Stephen Hart*, 387.
  3. The test oaths to the claims commented on as affecting the same question. *Id.*
  4. The vessel had on board a flag of the enemy, which was secretly thrown overboard after her capture. *Id.*
  5. Alleged ignorance of her master as to her having on board articles contraband of war. *Id.*
  6. In this case the court made an order for the unloading, opening, and examination of the cargo, to ascertain its nature and quality. *The Peterhoff*, 463.
- See ARREST, 2, 3.
- BAIL, 1.
- BILL OF LADING.
- BLOCKADE, 6, 7, 10, 11, 47, 49, 57 to 59, 61, 62, 68.
- CAPTURE, 7, 8.
- CONDEMNATION, 1, 2, 4, 5, 8, 11, 12, 14 to 16, 18, 19, 20, 21, 23 to 29, 31 to 34, 36 to 39, 41 to 73, 76 to 91, 93 to 96, 98 to 112, 114 to 130, 132 to 140, 142 to 170.
- CONTRABAND OF WAR, 1 to 14, 19 to 26.
- DESTINATION.
- ENEMY, 9, 15, 17, 22, 32, 35 to 37.
- EVIDENCE, 13, 15, 16, 20, 26, 35.
- FREIGHT, 1.
- FURTHER PROOF, 11, 12.
- INTERVENTION.
- INVOICE.
- JURISDICTION, 3, 12.
- LIEN, 3, 7.
- MASTER, 2, 4, 6.
- NEUTRAL, 10 to 18.
- PAPERS, 7, 15, 16.
- PLEADING, 4.
- PRACTICE, 3, 19, 20, 32, 34 to 36, 51, 53, 56, 58 to 60.
- PRIZE COMMISSIONER, 7, 8, 9.
- RESTORATION, 2, 3, 5, 7, 8, 12, 14, 16, 17 to 23, 27 to 35.
- SALE, 1, 2.
- SALVAGE.
- SEARCH, 1.
- SPOILIATION, 2, 3, 6.
- TITLE.
- VESSEL, 3, 4.

### Cases commented on.

1. The principles announced by this court in the case of *The Stephen Hart* (ante p. 387) restated and applied. *The Springbok*, 434.
2. The principles announced by this court in the cases of *The Stephen Hart* (ante p. 387) and *The Springbok* (ante p. 434) affirmed. *The Peterhoff*, 463.
3. The decision of the Supreme Court in *The Prize Cases* (2 Black, 635) as to the questions of war and blockade, applied to this case. *The D. Sargeant*, 576.

**Charterer.**

See BLOCKADE, 71.

**Charter Party.**

See BLOCKADE, 71.

**Circuit Court.**

See SALE, 1 to 5.

**Claim.**

1. Suppression, in the test oath to the claim, of the fact that the claimants were resident traders in the enemy's country, it averring that they were citizens of the United States. *The Sally Magee*, 382.
2. Effect of a claim put in to prize property by underwriters who had insured it against capture. *The Peterhoff*, 463.

See CARGO, 3.

CONDEMNATION, 140.

ENEMY, 35.

LIEN, 4.

PLEADING, 2 to 9, 11, 12.

PRACTICE, 10, 14, 25, 26, 28, 61.

**Claimant.**

See APPRAISER, 1, 2.

AUCTIONEER, 3.

BAIL, 1.

BLOCKADE, 21, 36, 54.

CLAIM, 1.

CONDEMNATION, 26, 100, 113, 125.

CONTRABAND OF WAR, 3, 21.

COSTS, 14, 15.

ENEMY, 24, 26, 32.

EVIDENCE, 8, 10, 17, 22, 27.

FURTHER PROOF, 6 to 8, 11.

NEUTRAL, 7 to 9.

PAPERS, 16.

PRACTICE, 3, 5, 10, 15, 25, 34, 43, 53, 57, 61.

RESTORATION, 16, 17, 22, 32 to 35.

SALE, 1, 2.

VESSEL, 3, 4.

**Clearance.**

See CONDEMNATION, 78, 79.

PAPERS, 10.

PROBABLE CAUSE.

**Commerce.**

See NEUTRAL, 10 to 16.

**Commissioner.**

See APPEAL, 2.

APPRAISER, 3.

COSTS, 3 to 6.

EVIDENCE, 9.

PRACTICE, 3, 34 to 36, 50.

PRIZE MONEY, 13.

SALE, 1.

**Condemnation.**

1. Vessel and cargo condemned, as enemy property, because belonging to resident citizens of the enemy's country. *The Pioneer*, 2.

2. Vessel and part of cargo condemned, as enemy property, because belonging to resident citizens of the enemy's country. *The Crenshaw*, 2.

3. Vessel condemned as enemy property. *The Winifred*, 2.

4. A part of her cargo condemned as enemy property, although under hypothecation to a neutral merchant for advances on the invoice and bill of lading. *Id.*

5. Cargo condemned as enemy property, unless further proof be furnished within ten days as to ownership of cargo. *The Hannah M. Johnson*, 2.

6. Vessel condemned as enemy property. *The General Green*, 2.

7. Vessel condemned as enemy property, and for an attempt to violate the blockade. *The Hallie Jackson*, 2.

8. Cargo condemned as enemy property. It was also shipped for an enemy port, with intent to violate the blockade. *The Hallie Jackson*, 2.

9. Vessel condemned as enemy property. *The North Carolina*, 2.

10. A part of the vessel condemned as enemy property; the rest of the vessel restored. *The Forest King*, 2.

11. Vessel and cargo condemned as enemy property. *The Lynchburg*, 3.

12. Vessel and cargo condemned as enemy property, and also under the acts of July 13, 1861, and August 6, 1861. (12 U. S. Statutes at Large, 257, sec. 5, and 319, sec. 1 to 3.) *The Falcon*, 52.

13. Vessel condemned as enemy property. *The Velasco*, 54.

14. Vessel and cargo condemned as enemy property. *The Sarah Starr*, 69.

15. Vessel and cargo condemned as enemy property. *The Aigburth*, 69.

16. Vessel and cargo condemned as enemy property. *The Prince Leopold*, 89.

17. Part of vessel condemned, under the 6th section of the act of July 13, 1861, (12 U. S. Statutes at Large, 257,) as belonging to a citizen of a State in insurrection. *The Mary McKee*, 91.

18. Cargo condemned as enemy property, and also for an attempt to violate the blockade. *The Solidad Coe*, 94.

19. Vessel and cargo condemned as enemy property, and for a violation of the blockade. *The Albion*, 95.

20. Cargo condemned as enemy property, employed in aiding the insurrection on foot at the place of its capture and as shipped with intent to run the blockade. *The Henry C. Brooks*, 99.

21. Vessel and cargo condemned for an attempt to violate the blockade. *The Louisa Agnes*, 107.

22. Part of vessel condemned, under the sixth section of the act of July 13, 1861, (12 U. S. Statutes at Large, 257,) as belonging to a citizen of a State in insurrection. *The Ned*, 119.

23. Vessel and cargo condemned as enemy property, and for a violation of the blockade. *The Henry Middleton*, 121.

24. Cargo condemned as enemy property, and for a violation of the blockade. There was also a spoliation of papers, and the cargo was sent to sea in an enemy vessel. *The Edward Barnard*, 122.

25. Vessel and cargo condemned. *The Gipsey*, 126.



26. The vessel was pursued while attempting to violate the blockade. All on board of her escaped before she was taken. The court allowed other testimony to be given. Letters on board afforded a strong presumption that vessel and cargo were enemy property. No claimant intervened. It not being probable that the papers of the vessel, or any of her crew, or any further proof could be produced, the court decreed condemnation of vessel and cargo, the vessel having been appraised and taken for the use of the government in the Gulf of Mexico, where she was captured, and not having been brought within this district. *Id.*
27. Vessel and cargo condemned as enemy property, and for an attempt to violate the blockade. *The Captain Spedden*, 127.
28. The vessel and cargo were taken for the use of the government, on appraisal, at the place of capture, in the Gulf of Mexico, and the vessel was afterwards lost at sea. *Id.*
29. The vessel and cargo were confiscable under the act of July 13, 1861. (12 U. S. Statutes at Large, 225.) *Id.*
30. Vessel condemned as enemy property, and for a violation of the blockade. *The Express*, 128.
31. Vessel and cargo condemned as enemy property, and for an attempt to violate the blockade. *The Venus*, 129.
32. Vessel and cargo condemned as enemy property, and for an attempt to violate the blockade. *The Henry Lewis*, 131.
33. Vessel and cargo condemned as enemy property, and for a violation of the blockade. *The Gironne*, 132.
34. Vessel and cargo condemned. *The Delta*, 133.
35. Vessel condemned as enemy property, and for a violation of the blockade. *The Advocate*, 142.
36. Cargo and appraised valuation of vessel condemned as enemy property, and for a violation of the blockade. *The A. J. Vico*, 143.
37. Vessel and cargo condemned as enemy property, and for a violation of the blockade. *The Lizzie Weston*, 144.
38. Vessel and cargo condemned as enemy property, and for a violation of the blockade. *The Delight*, 145.
39. Vessel and cargo condemned as enemy property, and for a violation of the blockade. *The Wave*, 148.
40. Vessel condemned as enemy property, having been appraised by a naval survey, and appropriated, at that valuation, to the use of the United States, at the place of capture. Appraised value ordered to be distributed. *The Ozzola*, 150.
41. Vessel and cargo condemned for an attempt to violate the blockade. *The Mars*, 150.
42. Vessel and cargo condemned. *The Chesire*, 151.
43. Vessel and cargo condemned as enemy property. *The J. G. McNeill*, 162.
44. Vessel and cargo condemned as enemy property, and for an attempt to violate the blockade. *The Pioneer*, 163.
45. Vessel and cargo condemned as enemy property, and for a violation of the blockade. *The Joanna Ward*, 164.
46. Vessel and cargo condemned as enemy property, and for an attempt to violate the blockade. *The Major Barbour*, 167.
47. Vessel and cargo condemned as enemy property, and for a violation of the blockade. *The Zavalla*, 173.
48. Vessel and cargo condemned. *The Empress*, 175.
49. Vessel and cargo condemned for an attempt to violate the blockade. *The J. W. Winder*, 181.
50. Vessel and cargo condemned for an attempt to violate the blockade. *The Flask*, 183.
51. Vessel and cargo condemned as enemy property. *The Olive*, 185.
52. Vessel and cargo condemned on the following grounds:
  1. The vessel left the enemy's country as enemy property, and no attempted change of it to neutral property was made until her arrival in a neutral port. There is no evidence of a *bona fide* consideration paid for her purchase, or of a bill of sale executed, or of actual possession delivered to the alleged purchaser, or that he ever exercised acts of ownership over the vessel, or claimed to be her owner.
  2. She had previously come out of an enemy port by evading the blockade, and was seized on her first voyage subsequent thereto.
  3. Her ostensible voyage from a neutral port to a loyal port was simulated, and she was really bound to a blockaded port. *The Mercy*, 187.
53. Vessel and cargo condemned as enemy property. *The Sarah*, 195.
54. Vessel and cargo condemned as enemy property. *The Lucy C. Holmes*, 196.
55. Vessel and cargo condemned as enemy property. *The New Eagle*, 196.
56. Vessel and cargo condemned as enemy property, and for a violation of the blockade. *The Jessie J. Cox*, 196.
57. Vessel and cargo condemned as enemy property, and for a violation of the blockade. *The Agnes H. Ward*, 197.
58. Vessel and cargo condemned for an attempt to violate the blockade. *The Mary Stewart*, 210.
59. Cargo condemned, on further proof, for a violation of the blockade by the vessel. *The Sarah and Caroline*, 214.
60. On further proof, vessel and cargo condemned as enemy property. *The Actor*, 215.
61. Vessel and cargo condemned for a violation of the blockade, and as enemy property. *The Shark*, 215.
62. Vessel and cargo condemned for an attempt to violate the blockade. *The Annie Sophia*, 219.
63. On further proof, vessel and cargo condemned for a violation of the blockade. *The Annie*, 222.
64. Cargo condemned for an attempt by the vessel to violate the blockade, the vessel not being taken on process in the suit. *The Joseph H. Toona*, 223.
65. Vessel and cargo condemned for the following causes:
  1. The vessel was enemy property.
  2. There was an attempt to violate the blockade.
  3. A large part of the cargo was contraband of war, and was laden on the vessel with knowledge, on the part of her owner and of the other freighters of the cargo, that the voyage was an illicit one, and was destined to a port of the enemy. *The Etilda*, 223.

66. Vessel condemned as enemy property. *The William H. Northrop*, 235.
67. Vessel and cargo condemned for an attempt to violate the blockade. *Id.*
68. Vessel and cargo condemned for an attempt to violate the blockade. *The Tubal Cain*, 240.
69. Vessel and cargo condemned as enemy property. *The Reindeer*, 241.
70. Vessel and cargo condemned for a violation of the blockade. *The Ann*, 242.
71. Vessel and cargo condemned for an attempt to violate the blockade. *The Lizzie*, 243.
72. Vessel and cargo condemned for an attempt to violate the blockade. *The British Empire*, 245.
73. Vessel and cargo condemned as enemy property, attempted to be used in trade by their owner for the benefit of the enemy, and arrested in the act of violating the blockade. *The Troy*, 246.
74. An enemy vessel in the naval service of the enemy as a gunboat, condemned. *The Ella*, 248.
75. Other vessels condemned as enemy property. *Id.*
76. Vessel and cargo condemned on these grounds:
  1. The vessel was not *bona fide* a neutral vessel.
  2. Her papers as to her destination were false.
  3. She had on board articles contraband of war, intended for an enemy port, and on transportation by her to such port at the time of her arrest.
  4. She was seized while attempting to violate a known blockade. *The Elizabeth*, 250.
77. Vessel and cargo condemned for an attempt to violate the blockade. *The Memphis*, 260.
78. Vessel and cargo seized in the harbor of Beaufort, N. C., on its capture, condemned for these reasons:
  1. For violating the blockade in entering Beaufort.
  2. For taking on board there an enemy clearance and a cargo, with intent to evade the blockade in coming out, and attempting to come out.
  3. For carrying into Beaufort a large supply of military equipments. *The Alliance*, 262.
79. Vessel and cargo condemned:
  1. For having violated the blockade in entering Beaufort.
  2. For shipping there a new cargo, with intent to violate the blockade in coming out.
  3. For taking an export license and clearance from the enemy at Beaufort.
  4. For a false representation on the vessel's papers as to who was master of the vessel. *The Gondar*, 266.
80. Vessel and cargo condemned for an attempt to violate the blockade. *The Patras*, 269.
81. Vessel and cargo condemned for an attempt to violate the blockade, and for being engaged in transporting to an enemy port articles contraband of war. *The Nassau*, 271.
82. Vessel and cargo condemned for an attempt to violate the blockade. *The Stettin*, 272.
83. Vessel and cargo condemned for an attempt to violate the blockade. *The Robert Bruce*, 285.
84. Vessel and cargo condemned for an attempt to violate the blockade. *The Reverse*, 276.
85. Vessel and cargo condemned as enemy property, and for a violation of the blockade. *The General C. C. Pinckney*, 278.
86. Vessel and cargo condemned for an attempt to violate the blockade. *The Albert*, 280.
87. Vessel and cargo condemned. *The Maria*, 283.
88. Vessel and cargo condemned for an attempt to violate the blockade. *The Mary Teresa*, 286.
89. Vessel and cargo condemned. *The Ella Warley*, 288.
90. Cargo condemned. *The John Gilpin*, 291.
91. Vessel and cargo condemned. *The Belle*, 294.
92. Vessel condemned. *The Napoleon*, 296.
93. Vessel and cargo condemned for an attempt to violate the blockade, and because the papers of the vessel were false as to her destination. *The Scotia*, 299.
94. Vessel and cargo condemned for an attempt to violate the blockade. *The Anglia*, 300.
95. Vessel and cargo condemned as enemy property, and for an attempt to violate the blockade. *The Water Witch*, 300.
96. Vessel and cargo condemned for a violation of the blockade. *The Rambler*, 302.
97. The property in this case, consisting of cotton, rosin, staves, and planks, having been captured by the naval forces of the United States during the war, in the attack on Newbern, N. C., and being enemy property, employed at the time by the enemy in aid of hostilities against the United States, by being used in building fortifications, was condemned as prize of war. *22d Bales of Cotton*, 302.
98. Vessel and cargo condemned for a violation of the blockade. *The Annie Deas*, 305.
99. Vessel condemned for an attempt to violate the blockade and to introduce into the enemy's country a cargo of articles contraband of war. *The Ouachita*, 306.
100. Cotton condemned, having been purchased by the claimant, a citizen of the United States and of a loyal State, in the enemy's country, during the war, and having been arrested while waterborne and in the act of being exported from there in violation of the blockade. *52 Bales of Cotton*, 309.
101. Vessel and cargo condemned for an attempt to violate the blockade and to supply to the enemy articles contraband of war. *The Sunbeam*, 316.
102. Vessel and cargo condemned as enemy property, and for an attempt to violate the blockade. *The Florida*, 327.
103. Vessel and cargo condemned for a violation of the blockade, and as enemy property. *The Mercury*, 328.
104. Cargo condemned for a violation of the blockade. *The Wave*, 329.
105. Vessel and cargo condemned as enemy property, and for a violation of the blockade. *The Reindeer*, 330.
106. Vessel and cargo condemned as enemy property, and for a violation of the blockade. *The Hetwan*, 331.
107. Vessel and cargo condemned as enemy property, sailing under the enemy's flag, and under passes from the enemy. *The Anna*, 332.

108. Vessel and cargo condemned for an attempt to violate the blockade. *The Minna*, 333.
109. Vessel and cargo condemned for an attempt to violate the blockade. *The Annie*, 335.
110. Vessel and cargo condemned for an attempt to violate the blockade. *The Belle*, 353.
111. Vessel and cargo condemned for an attempt to violate the blockade, the cargo being also mostly contraband of war, and on transportation to a port of the enemy. *The Nicolai First*, 354.
112. Vessel and cargo condemned for an attempt to violate the blockade. *The Granite City*, 355.
113. The former decision in this case confirmed, for these reasons:
  1. The vessel entered the port where she was captured, by violating the blockade.
  2. One-eighth of the vessel was enemy property, lawfully seized in the enemy's country, in actual battle, by the United States military forces.
  3. The remaining seven-eighths of the vessel, if legally the property of the claimant, is subject to forfeiture for holding commercial intercourse with a rebel State. *The Napoleon*, 357.
114. Vessel and cargo condemned for an attempt to violate the blockade. *The Sue*, 361.
115. Vessel and cargo condemned for a violation of the blockade. *The Douro*, 362.
116. Vessel and cargo condemned for an attempt to violate the blockade. *The Mary Jane*, 363.
117. Vessel and cargo condemned as enemy property, and for a violation of the blockade. *The Neptune*, 367.
118. Vessel and cargo condemned for an attempt to violate the blockade. *The Rising Dawn*, 368.
119. Vessel and cargo condemned for a violation of the blockade. *The Emeline*, 370.
120. Vessel and cargo condemned for having false papers as to their destination, and for an attempt to violate the blockade. *The Antelope*, 370.
121. Vessel and cargo condemned as enemy property, and for a violation of the blockade. *The Angelina*, 371.
122. Vessel and cargo condemned as enemy property, and for a violation of the blockade. *The Odd Fellow*, 372.
123. On further proofs vessel and cargo condemned for an attempt to violate the blockade. *The Levi Rowe*, 373.
124. Vessel and cargo condemned for an attempt to violate the blockade, and because of false papers as to their destination, and because the cargo was partly contraband of war, on transportation to a port of the enemy. *The Gertrude*, 374.
125. Vessel and cargo condemned as enemy property, the claimants being, at the time of the capture, citizens and residents of one of the seceded States of the Union. *The Sally Magee*, 379.
126. Vessel and cargo condemned for the following reasons:
  1. At the time of her seizure the vessel was laden with and transporting articles contraband of war, with intent to furnish and supply them to the use and aid of the enemy.
  2. She was, when seized, navigated with the attempt and design to violate the blockade of ports of the enemy held in lawful blockade by the naval forces of the United States. *The Stephen Hart*, 379.
127. Vessel and cargo condemned on the following grounds:
  1. The vessel was, at the time of her capture at sea, knowingly laden, in whole or in part, with articles contraband of war, with intent to deliver such articles to the aid and use of the enemy.
  2. The true destination of the vessel and cargo was not to a neutral port, and for trade and commerce, but to some port lawfully blockaded by the forces of the United States, and with intent to violate such blockade.
  3. The papers of the vessel were simulated and false. *The Springbok*, 380.
128. Vessel and cargo condemned on the following grounds:
  1. The vessel, knowingly laden, in whole or in part, with articles contraband of war, was transporting them at sea, not to a neutral port, for purposes of trade and commerce, within the authority and intent of public law, but to some other port or place, and in aid and for the use of the enemy, and in violation of the law of nations.
  2. The vessel's papers were simulated and false as to her real destination. *The Peterhoff*, 381.
129. Vessel and cargo condemned for an attempt to introduce contraband goods into the enemy's country by a breach of blockade. *The Stephen Hart*, 387.
130. Vessel and cargo condemned. *The Springbok*, 434.
131. Vessel condemned for an attempt to violate the blockade. *The Kate*, 550.
132. Vessel and cargo condemned for an attempt to violate the blockade. *The St. George*, 551.
133. Vessel and cargo condemned as enemy property. *The Maria Bishop*, 552.
134. Vessel and cargo condemned for a violation of the blockade. *The Tampico*, 554.
135. Vessel and cargo condemned for an attempt to violate the blockade, and as enemy property. *The Mary Clinton*, 556.
136. Vessel and cargo condemned for a violation of the blockade. *The Emma*, 561.
137. Vessel and cargo condemned as enemy property, and for a violation of the blockade. *The Merrimac*, 563.
138. Vessel and cargo condemned for an attempt to violate the blockade. *The Antona*, 572.
139. Vessel and cargo condemned for a violation of the blockade. *The D. Sergeant*, 576.
140. The vessel having been captured within five miles of the enemy's coast, and about 150 miles off her true course, as designated on her papers, and no excuse being given for the deviation, and her cargo consisting partly of articles contraband of war, and wholly of supplies of urgent importance to the enemy, and no claim being interposed to the vessel and cargo, although the master was brought in and examined as a witness, the court ordered condemnation of vessel and cargo, unless their owner should, on application, obtain leave, prior to the third regular term after such order, to interpose a claim to the merits of the libel. *The Nymph*, 564.

141. The libellants were allowed meantime to take an order for the sale of the prize property. *Id.*
  142. Vessel and cargo condemned for an attempt to violate the blockade. *The Banahce*, 580.
  143. Vessel and cargo condemned for an attempt to violate the blockade. *The Margaret and Jessie*, 581.
  144. Vessel and cargo condemned for a violation of the blockade. *The A. D. Vance*, 608.
  145. Vessel and cargo condemned for a violation of the blockade. *The Annie*, 612.
  146. Vessel and cargo condemned for an attempt to violate the blockade. *The Lady Stirling*, 614.
  147. Vessel and cargo condemned for an attempt to violate the blockade. *The Mary*, 618.
  148. Vessel and cargo condemned for a violation of the blockade. *The Charlotte*, 623.
  149. Vessel and cargo condemned for a violation of the blockade. *The Stag*, 625.
  150. Vessel and cargo condemned for a violation of the blockade. *The Blenheim*, 626.
  151. The vessel having been chased at sea while attempting to break the blockade and driven on shore in the enemy's territory and captured, with her cargo, and wrecked after capture, a part of her cargo having been brought into this district, was condemned as prize of war. *The Perenney*, 628.
  152. Decree of the district court condemning vessel and cargo for an attempt to violate the blockade affirmed. *The Joseph H. Toone*, 641.
  153. Decree of the district court condemning vessel and cargo for an attempt to violate the blockade affirmed. *The Elizabeth*, 642.
  154. Decree of the district court condemning vessel and cargo for an attempt to violate the blockade affirmed. *The Chesire*, 643.
  155. Decree of the district court condemning the vessel and cargo as enemy property affirmed. *The North Carolina*, 645.
  156. Decree of the district court condemning vessel and cargo as enemy property, and acquitting the vessel on the charge of breaking the blockade, affirmed. *The Aighurth*, 645.
  157. Decree of the district court condemning vessel and cargo as enemy property, and acquitting them on the charge of violating the blockade, affirmed. *The Prince Leopold*, 647.
  158. Decree of the district court condemning vessel and cargo for an attempt to violate the blockade affirmed. *The Ella Warley*, 648.
  159. Decree of the district court condemning vessel and cargo as enemy property affirmed. *The Pioneer*, 649.
  160. Decree of the district court, acquitting the vessel and cargo on the charge of violating the blockade, and condemning the vessel and cargo as enemy property, affirmed as to the non-violation of the blockade, and as to the vessel and a part of the cargo, they being enemy property, and reversed as to the residue of the cargo, it not being enemy property. *The Sarah Starr*, 650.
  161. Decree of the district court condemning vessel and cargo for an attempt to violate the blockade affirmed. *The Ouachita*, 652.
  162. Decree of the district court condemning the vessel as enemy property and restoring the cargo as belonging to neutral owners affirmed. *The General Greene*, 654.
  163. Decree of the district court condemning vessel and cargo for an attempt to violate the blockade affirmed. *The Delta*, 654.
  164. Decree of the district court condemning vessel and cargo for a violation of the blockade affirmed. *The Memphis*, 656.
  165. Decree of the district court condemning vessel and cargo for an attempt to violate the blockade affirmed. *The Sunbeam*, 656.
  166. Decree of the district court, so far as it condemned the vessel and all of the cargo except 504 bags of coffee, affirmed. As to the 504 bags of coffee, further argument ordered as to the proprietary interest therein, and either party allowed to produce further proof upon it. *The Lynchburg*, 659.
  167. Decree of the district court condemning vessel and cargo for an attempt to violate the blockade affirmed. *The Albert*, 663.
  168. Decree of the district court condemning vessel and cargo for an attempt to violate the blockade affirmed. *The Esilda*, 664.
  169. Decree of the district court condemning vessel and cargo for an attempt to violate the blockade affirmed. *The Pairas*, 664.
  170. Decree of the district court condemning vessel and cargo for an attempt to violate the blockade affirmed. *The Stettin*, 665.
  171. Decree of the district court condemning the property as enemy property affirmed. *The Pioneer*, 666.
- See BLOCKADE, 9, 10, 21, 66.  
CAPTURE, 4, 5, 11.  
CONTRABAND OF WAR, 3, 4, 7 to 14.  
COSTS, 14, 15.  
ENEMY, 10, 15, 22, 36.  
EVIDENCE, 35.  
FREIGHT, 1.  
FURTHER PROOF, 4.  
LIEN, 2.  
NEUTRAL, 6, 18.  
PRACTICE, 1 to 3, 17, 19, 47, 51, 53.  
RESTORATION, 18, 23, 28 to 31, 35.  
SALK, 1, 2, 6 to 9.  
SPOILIATION, 2, 4, 6, 13, 19, 23.  
VESSEL, 2.

# Confiscation.

1. The act of August 6, 1861, (12 U. S. Statutes at Large, 319,) "to confiscate property used for insurrectionary purposes," is not to be regarded as a legislative determination that a vessel belonging to a citizen of a State in insurrection was not, before the passage of that act, confiscable merely as the property of an insurrectionist or rebel, without an enactment of Congress to that end. *The Hiawatha*, 1.

2. The act of July 13, 1861, (12 U. S. Statutes at Large, 255,) does not restrict the war powers of the United States. The confiscations provided for by the sixth section of that act, and by the act of August 6, 1861, (12 U. S. Statutes at Large, 319,) can be carried into effect by the prize courts of the United States, as respects property captured at sea. *The Sarah Starr*, 69.
  3. Under the confiscation act of July 13, 1861, a vessel belonging to an alien female, who resided transiently at New Orleans, having gone there to visit some relatives and attend to some matters of account, with the intention of then returning abroad, and who was engaged in no mercantile business there, was held not to be subject to forfeiture. *The D. F. Keeling*, 92.
  4. The confiscation act of July 13, 1861, is constitutional. *The Ned*, 119.
  5. The acts of Congress of July 13, 1861, August 6, 1861, and March 3, 1863, (12 U. S. Statutes at Large, 255, 319, 762,) relate to confiscations for intraterritorial offences, and not to captures at sea. *The Sally Magee*, 382.
- See BLOCKADE, 44.  
CONDEMNATION, 1, 12, 29, 113.  
ENEMY, 1, 19.  
RESTORATION, 3.
- Congress.**
- See BLOCKADE, 1.  
CONFISCATION, 1.  
WAR, 4.
- Consideration.**
- See CONDEMNATION, 52.
- Consignment.**
- See BLOCKADE, 57.  
CARGO, 1.  
EVIDENCE, 13.
- Consigner.**
- See EVIDENCE, 13.
- Consul.**
- See ENEMY, 35 to 37.  
INTERVENTION.
- Contraband of War.**
1. Part of the cargo contraband of war. *The Tubal Cain*, 240.
  2. Part of the cargo contraband of war. *The Ann*, 242.
  3. The entire cargo of the vessel was contraband of war, and was thrown overboard while she was being chased, before her capture; and her claimant was part owner of another vessel recently condemned in this case for a violation of the same line of blockade. *The Ouachita*, 306.
  4. The carriage of contraband with a false destination works a condemnation of the vessel as well as the cargo. *The Stephen Hart*, 387.
  5. The well-settled rule of law is, that where contraband goods, destined for the use of the enemy, are found on board of a vessel, all other goods on board of that vessel belonging to the owner of the contraband articles, even those goods which are innocent, must share the fate of the contraband goods. *The Springbok*, 434.
  6. The penalty of contraband extends to all the property of the same owner, involved in the same unlawful transaction; and, therefore, if articles which are contraband, and are going to the enemy, are on board of the same vessel with articles which are not contraband, and all the articles belong to the same owner, all will be alike condemned, the innocent articles being affected with the contagion of the contraband articles. *Id.*
  7. The contraband articles found on board of the vessel condemned, as having been destined for the enemy's country, and the entire cargo also condemned as belonging to the owners of the contraband goods. *Id.*
  8. The vessel, in this case, was employed in carrying on the unlawful enterprise of transporting contraband articles on their way to the enemy's country, to be there introduced by a violation of the blockade, and she was so employed under such a state of facts as made her owners responsible for the unlawful transportation of the contraband articles, and for the acts of the master in relation to such transportation, to such an extent as to justify the condemnation of the vessel. *Id.*
  9. Formerly the mere fact of carrying a contraband cargo rendered the vessel liable to condemnation, but the modern rule is different. The carrying of contraband articles is now attended only with loss of freight and expenses, unless the vessel belongs to the owner of the contraband articles, or unless there are circumstances of fraud as to the papers, and the destination of the vessel or the cargo, and thus an attempt, under colorable appearances, to defeat the rights of the belligerent. *Id.*
  10. Where the owner of the vessel is himself privy to the carriage of contraband, or where the master of the vessel, as the agent of such owner, interposes so actively in the fraud as to consent to give additional color to it by sailing with false papers, the modern relaxation in favor of the vessel no longer exists. *Id.*
  11. The master of the vessel, in this case, was carrying a cargo composed in part of contraband articles under false papers. He, and the owners who appointed him as their agent, must be regarded as affected with knowledge of the contraband articles on board, and of their destination, to the same extent as if actual knowledge thereof was brought home to the master and the owners. *Id.*
  12. And the owners are responsible for the documenting of the cargo by the master, by means of the bills of lading, to a neutral port, when it was in fact destined, composed in part of contraband goods, to a port of the enemy. *Id.*

13. If the owner of a vessel places it under the control of a master who permits it to carry, under false papers, contraband goods, ostensibly destined for a neutral port, but in reality going to a port of the enemy, he must sustain the consequence of such misconduct on the part of his agent. *Id.*
14. From the moment a vessel, having on board contraband articles which have a destination to a port of the enemy, leaves her port of departure, she may be legally captured; and it is not necessary to wait until the goods are actually endeavoring to enter the enemy's port, for the transportation being illegal at its commencement, the penalty immediately attaches. *Id.*
15. Implements and munitions of war which, in their actual condition, are of immediate use for warlike purposes, are to be deemed contraband whenever they are destined to the enemy's country or to the enemy's use. *The Peterhoff*, 463.
16. All military equipments and military clothing are regarded as contraband articles. *Id.*
17. In England all manufactured articles which, in their natural state, are fitted for military use, or for building and equipping ships-of-war, among which articles cordage is included, are contraband in their own nature. *Id.*
18. The probable use of articles is inferred from their destination; and if articles capable of military use are going to a place where any need of their employment in military use exists, it will be presumed that they are going for military use, although it is possible that they might have been applied to civil consumption. *Id.*
19. In this case the vessel, although ostensibly on a voyage from London to neutral waters at the mouth of the Rio Grande, was laden with a cargo composed largely of articles contraband of war, which were not designed, on their departure from England, to be sold or disposed of in the neutral market of Matamoras, but were designed to be delivered, either directly, or indirectly by trans-shipment, in the country of the enemy and for the use of the enemy. *Id.*
20. Character and quantity of the contraband portion of the cargo. *Id.*
21. All the claimants of the vessel and cargo had on board contraband articles, which were destined to be delivered directly, or indirectly by trans-shipment, into the enemy's country, and for the use of the enemy. *Id.*
22. Where contraband articles, destined for the use of the enemy, are found on board of a vessel, all other goods on board of that vessel belonging to the owner of the contraband articles, even those goods which are innocent, must share the fate of the contraband goods. *Id.*
23. Whether the English doctrine is sound that contraband goods are liable to capture, even though destined to a neutral port, if found entering waters common to both the neutral port and a hostile port, *quere. Id.*

24. Where the vessel belongs to the owner of the contraband articles, or where there are circumstances of fraud as to the papers, or the destination of the vessel or the cargo, and thus an attempt, under colorable appearances, to defeat the rights of a belligerent, the vessel which carries the contraband articles will be condemned, and the penalty on the vessel will not be limited merely to a loss of freight and expenses. *Id.*
  25. So, too, the vessel will be condemned not only where her owner is privy to the carriage of contraband, but where the master of the vessel, as the agent of such owner, interposes so actively in the fraud as to consent to give additional color to it by sailing with false papers. *Id.*
  26. So, also, if the owner of a vessel places it under the control of a master who permits it to carry, under false papers, contraband goods ostensibly destined to a neutral port, but in reality going to the country of the enemy, he must sustain the consequence of such misconduct on the part of his agent. *Id.*
  27. From the moment a vessel, having on board contraband articles which have a destination to the enemy's country, leaves her port of departure, she may be legally captured, and it is not necessary to wait until the goods are actually endeavoring to enter the enemy's country, the penalty attaching the moment the illegal transportation commences. *Id.*
- See CAPTURE, 6.  
CARGO, 5.  
CONDEMNATION, 65, 76, 78, 81, 99, 101, 111, 124, 126 to 129, 140.  
EVIDENCE, 36.  
MASTER, 2, 4, 6.  
NEUTRAL, 2, 12 to 18.  
PAPERS, 16 to 18.  
PRACTICE, 59, 60.  
UNITED STATES.  
VESSEL, 4.

**Counsel.**

See COSTS, 7, 11 to 13.

**Costs.**

1. Whether the captors, as distinguished from the United States, can have an award of costs in a prize suit, *quere. The Velasco*, 54.
2. The subject of the rate of costs in prize cases deferred, to await the action of Congress. *The Henry C. Brooks*, 99.
3. No specific tariff of fees having been appointed to the suits by statute, the costs fixed by statute for similar services in admiralty will be allowed in this court, except as otherwise directed by acts posterior to the fee bill of February 26, 1853. *Costs, &c.*, 206.
4. The compensation directed to be made by the act of March 25, 1862, to the officers therein named, will be computed and adjusted, as nearly as may be, conformably to allowances by the laws of the United States to employes for like services under the government, or in accordance with established rules and usages of the courts in regard to their officers rendering like services. In cases of doubt or difficulty, evidence may be taken on the question of *quantum meruit. Id.*

5. The gross costs taxed to any of the officers of court for services in prize suits will be, in collection or payment, subject to all limitations, as to amounts or periods of payment, under the acts of Congress in force at the time of such taxation. *Id.*
  6. The method of ascertaining the compensation of any of the officers of court for their services in prize suits, by a percentage on the value of the property coming officially into their possession or under their charge, will not be adopted by the court without express authority of law, or the assent thereto, in writing, by the parties whose interests are to be affected thereby. *Id.*
  7. The question of the allowance by the court of costs and fees to counsel and officers in prize cases discussed. *The Major Barbour*, 310.
  8. The court having at a previous term made a final decree distributing the proceeds of sale in the case, and awarding costs to various parties, a motion to reopen the question of costs was denied. *Id.*
  9. The act and joint resolution of July 17, 1862, in respect to prize cases, discussed. *Id.*
  10. The fee bill of February 26, 1853, discussed, in its application to prize suits. *The Nassau*, 601.
  11. The prize acts of March 25, 1862, (12 U. S. Stat. at Large, 375,) and July 17, 1862, (*Id.*, 608,) considered, as affecting fees to counsel for the captors. *Id.*
  12. Congress intended, by these acts, that the employment of counsel in prize cases, in order to warrant their compensation out of the prize fund, should be for the assistance of the district attorney, and in protection of the interests of the captors in common, and should be authorized or recognized by the Secretary of the Navy. *Id.*
  13. The court in this case refused to charge on the prize fund the bill of costs of a counsel employed by the captors, who did not bring himself within this rule. *Id.*
  14. Pending the appeals in these cases from decrees of condemnation, an order was made by the circuit court, at the instance of the claimants, for bonding the vessels. They were appraised for that purpose, and the bonds were tendered, when the marshal intervened, and claimed payment of his fees and disbursements in the seizure and subsequent safe-keeping of the vessels, and also for wharfage, towage, &c., or at least that the claimants pay into court a sum of money to cover these fees and expenses: *Held*, that the claimants were, thus far, liable for nothing but the expenses of bonding the vessel. *The Aigburth*, 635.
  15. Under the act of March 25, 1862, (12 U. S. Stat. at Large, 374,) the claimant is not responsible for the costs and expenses attending the seizure, detention, and safe custody of property seized as prize, unless there is a decree of condemnation, or of restitution on payment of costs. *Id.*
- See APPEAL, 2.  
APPRAISER.  
AUCTIONEER, 3.  
BLOCKADE, 11.  
DISTRICT ATTORNEY.
- See PRACTICE, 8.  
PRIZE COMMISSIONER.  
RESTORATION, 1 to 5, 8, 10, 12, 14, 16, 17, 20, 21.  
SALVAGE.  
WAREHOUSEMAN.
- Cotton.**
- See CONDEMNATION, 100.  
RESTORATION, 24.
- Courts.**
- See BLOCKADE, 34.  
CAPTURE, 4, 5, 10.  
CONFISCATION, 2.  
COSTS, 7, 8.  
DISTRICT COURT.  
ENEMY, 15, 16, 22, 31.  
EVIDENCE, 11, 16, 36.  
JURISDICTION, 1 to 4, 7 to 10.  
LIEN, 4.  
PRACTICE, 1, 2, 6, 30, 33, 43, 44 to 47, 50, 52 to 54.  
UNITED STATES.
- Creditor.**
- See ENEMY, 4, 5, 30.  
LIEN, 5.
- Crew.**
- See BLOCKADE, 21.  
CAPTURE, 1.  
CONDEMNATION, 26.  
DAMAGES, 1.  
EVIDENCE, 1, 2, 8 to 12, 14, 15, 38.  
JURISDICTION, 2.  
PRACTICE, 7 to 9, 11, 18, 39 to 42.  
WAGES.
- Custody.**
- See COSTS, 15.  
PRIZE COMMISSIONER, 6 to 9.
- D.**
- Damages.**
1. The captors held liable in damages for unjustifiable conduct towards the crew and property on the prize after her arrest. *The Jane Campbell*, 101.
  2. Reference to the prize commissioners to ascertain the damages. *Id.*
- See PRACTICE, 13, 15.  
RESTORATION, 2, 3, 8, 14, 16, 17.
- Debt.**
- See ENEMY, 4, 5.
- Decree.**
- See CAPTURE, 10.  
CONDEMNATION, 152 to 171.  
COSTS, 8, 14, 15.  
EVIDENCE, 11.  
FURTHER PROOF, 5.  
LIEN, 8.  
PRACTICE, 32, 33, 51, 52, 55.  
RESTORATION, 18, 23, 28 to 31, 35.  
SALE, 2, 6 to 9.
- Default.**
- See PRACTICE, 33.
- Defence.**
- See PLEADING, 7.  
PRACTICE, 26, 49.

**Deposition.**

See EVIDENCE, 21, 22, 34.

**Despatches.**

See NEUTRAL, 2.

**Destination.**

1. There was no *bona fide* intention of landing the cargo at Nassau, for sale or consumption there, so that it might be incorporated, in Nassau, into the common stock in that market; but, if it was to be landed there at all, it was only to be so landed for the purpose of being transhipped, in bulk, into another vessel, in pursuance of the original destination of the cargo to the enemy's country. *The Springbok*, 434.
  2. Notwithstanding the ostensible destination of the vessel to neutral waters at the mouth of the Rio Grande, the evidence establishes the actual hostile destination of the cargo. *The Peterhoff*, 463.
- See BLOCKADE, 22, 23, 25, 35, 62.  
CARGO, 2, 3.  
CONDEMNATION, 76, 93, 120, 124, 127, 128.  
CONTRABAND OF WAR, 4, 9, 11 to 14, 18, 19, 24, 26, 27.  
EVIDENCE, 6, 7, 20, 26.  
NEUTRAL, 10 to 16, 18.  
PAPERS, 2 to 8, 11 to 13, 15, 20, 21.

**Destruction.**

See SPOILIATION, 24, 25.

**Deviation.**

See BLOCKADE, 68.  
CONDEMNATION, 140.

**Distress.**

See BLOCKADE, 67, 74.

**District Attorney.**

1. The question of the allowance of costs and fees to the district attorney for services in prize cases considered. *The Anna*, 337.
2. The prize court is, and always has been, in the United States, a component part of the admiralty court. *Id.*
3. In prosecuting in prize cases the district attorney acts as the law officer of the government, and not in any other capacity. *Id.*
4. As the district attorney is compensated by fees and emoluments limited by law to a fixed salary, he cannot have any additional allowance for extra services within the scope of his appointment, unless such extra reward is expressly authorized by law. *Id.*
5. The act of August 6, 1861, in regard to the compensation of the district attorney, discussed. *Id.*
6. The act of March 25, 1862, section 3, does not abolish the restrictions on the compensation of the district attorney, or give to him for his personal use the amounts taxed to him for services in prize cases. *Id.*

7. The acts of July 17, 1862, and March 3, 1863, show that the restrictions on the compensation of the district attorney are still in force. *Id.*

8. The court will not apportion to the district attorney, by a direct decree, the amount of the costs taxed for his services in each prize suit which ought to be paid to him towards his aggregate salary. *Id.*

9. The court will tax the costs of the district attorney in prize cases, under the existing laws, on the written assent of the counsel for the captors, and the deposition of the district attorney, proving the performance of the service and its reasonable value, and will leave it to the disbursing officers of the treasury to see that no more is retained by that officer than the sum given him by law. *Id.*

See COSTS, 3 to 6, 12.

EVIDENCE, 28.

MAIL.

PRACTICE, 43, 50, 51.

**District Court.**

1. The district courts of the United States have exclusive jurisdiction in prize cases, without restriction to cases of seizures within their territorial dominions or on the high seas. *The Hiawatha*, 1.
- See CONDEMNATION, 152 to 171.  
DISTRICT ATTORNEY, 2, 3.  
ENEMY, 15, 16, 22.  
JURISDICTION, 11, 12.  
LIEN, 8.  
PRACTICE, 52, 55.  
RESTORATION, 23, 28 to 31, 35.  
SALE, 1, 2, 4, 6 to 9.

**District Judge.**

See PRACTICE, 43, 44.

**Documents.**

See BILL OF LADING.  
CONTRABAND OF WAR, 10 to 13.  
EVIDENCE, 30, 34, 35.  
INVOICE.  
PAPERS.

**Domicile.**

See ENEMY, 27.  
NEUTRAL, 3, 4.

**Dures.**

See ENEMY, 21.

**E.****Egress.**

See BLOCKADE, 3, 5, 15.

**Enemy.**

1. Citizens of the United States levying war against the government of the United States are enemies, and their property captured at sea is subject to confiscation. Persons abiding within the authority of such enemies become enemies because of their residence, without regard to their private sentiments or the locality of the place of their property. *The Hiawatha*, 1.



2. Citizens and subjects of the capturing nation are interdicted all trade with the enemy in time of war, and property purchased by them in the enemy's country during the war is, when taken at sea in an enemy vessel, lawful prize. *The Crenshaw*, 2.
3. The prize law regards property which was enemy property when shipped as continuing to be such, although consigned by a bill of lading to other parties, unless clear evidence is given of a change of title. *The Hannah M. Johnson*, 2.
4. Enemy property, shipped by an enemy, from an enemy port to his creditor to be applied on a debt, but which, before it came to the creditor's hands, was captured at sea, continues to be enemy property. *The Hannah M. Johnson*, 97.
5. The transfer to the creditor cannot be carried into effect after the intervention of the legal rights of the captors. *Id.*
6. Property belonging to a merchant residing and trading at an enemy port is, when captured, liable to condemnation as enemy property. The evidence discussed, showing that the transfer of the vessel by an enemy to a neutral was colorable and not real. *The Delta*, 133.
7. A transfer of an enemy vessel by an enemy to a neutral during the war, and for the purpose of her continuance in trade with the enemy, is void, even though made in good faith and for a valuable consideration. *Id.*
8. A transfer of an enemy vessel by an enemy to a neutral, in an enemy port, during the war, is void. *The Cheshire*, 151.
9. In this case the vessel and cargo were falsely represented to be *bona fide* neutral property, when they were, in fact, enemy property, and as such liable to capture. *Id.*
10. The rule of the English prize law is emphatic, that the absence of a bill of sale from the ship's papers, and the want of proof of payment of the purchase-money, in support of a claim by a neutral to an enemy vessel, are circumstances so strongly suspicious, and so vitally defective to a *bona fide* title to her, that the court, after condemnation of the vessel on the preparatory proofs, will not even allow further proof to be given in support of the title. *The Mersey*, 187.
11. A transfer of property to a neutral by an enemy in time of war, or in aid of a contemplated war, is illegal, as in violation and fraud of vested belligerent rights. *Id.*
12. A loyal citizen, or a resident of a loyal State, cannot, with impunity, employ his vessel in trade with the enemy or in favoring the insurrection. *The Shark*, 215.
13. The alleged sale of an enemy vessel, in time of war, by an enemy resident in the enemy country, to a neutral, held not to be proved. *The William H. Northrop*, 235.
14. The object of the transaction was to have the neutral put the vessel in trade with an enemy port, in evasion of an existing blockade of that port. *Id.*
15. The master and owner of the vessel, a resident of Charleston, S. C., purchased her there during the war, and loaded her with the produce of the country and brought her through the blockade of that port, she having papers issued to her by the enemy: *Held*, that she and her cargo must be condemned, and that a claim by the master that he had always been a loyal citizen of the United States, and had purchased the vessel and cargo as an investment, in order to withdraw himself and his family and property from the enemy country, could not be considered in this court. *The General C. C. Pinckney*, 278.
16. A loyal citizen of the United States is disqualified from appearing in a prize court to question the legality of the seizure of his property acquired during war in an enemy country by trade with the enemy. *Id.*
17. The cargo was the product of the enemy country, and was procured by purchase in an enemy port during the war by citizens of a loyal State. *The John Gilpin*, 291.
18. Trade of every description with an enemy during war is, by the law of nations, inhibited to the subjects of the nation prosecuting the war. *Id.*
19. By statute (12 U. S. Stat. at Large, 257) all commercial intercourse between citizens of the loyal States and those belonging to the insurrectionary States is unlawful, and the property acquired through such intercourse is subject to forfeiture. *Id.*
20. Her master and mate were residents of the enemy country, and were employed on the voyage at the instant of its commencement. *The Belle*, 294.
21. The vessel had, up to the time of her capture in enemy waters, been employed by the enemy for purposes connected with the operations of war, and was found with the enemy's flag and the enemy's artillery on board. She was captured by the United States naval squadron, acting in co-operation with the land forces, in the attack upon Newbern. Her owner, though he was a loyal citizen of a loyal State, had left her in charge of an agent, who allowed her to be so employed, and it did not appear that she was taken by the enemy by duress or in fraud of her owner's right. Under such circumstances her owner is concluded from denying her hostile character. *The Napoleon*, 296.
22. The case of *The Hiawatha* (2 Black, 635) determines that the United States government is, in this war, clothed with all the rights conferred by international law upon separate nationalities in a state of public hostilities with each other; and that a vessel and the cargo on board of her, being the property of residents in an insurrectionary State of the United States, are enemy's property, and subject, in the federal courts, to condemnation, on capture at sea, as lawful prize. *The Sally Mager*, 382.
23. Where it is claimed that an enemy vessel has been transferred during the war to a neutral, competent proof of the transfer must be produced, or the vessel will be regarded as enemy property. *The Stephen Hart*, 387.
24. The registry of the vessel in the name of the neutral claimant as owner is not enough. The bill of sale of the vessel must be proved, or the payment of the consideration for the transfer. *Id.*

25. Where enemy property is transferred to a neutral residing at the time in the enemy's country, the property is still regarded as enemy property. *Id.*
26. A person who was a citizen of the United States, residing in Texas at the time of the breaking out of the war, and has never owed any allegiance to any foreign country, is to be regarded as a citizen of the enemy's country, in prize proceedings, and cannot appear as a claimant in them, because he has no *persona standi* in court. *The Peterhoff*, 463.
27. The property of persons domiciled or residing within the rebel States is a proper subject of capture on the sea as enemy property. *The Mary Clinton*, 556.
28. Property devoted to illegal traffic becomes thus stamped as enemy property, and the quality of hostility does not depend exclusively upon the personal sentiments or lawful allegiance of the party, but arises often from his actual or business residence; so that the produce of the soil of the hostile country, engaged in the commerce of the hostile power, is legitimate prize without regard to the domicile of the owner. *Id.*
29. The produce of the enemy's soil and country, owned by a neutral, while it remains in the enemy's country, particularly if obtained therein by a resident agent of the neutral merchant, has imparted to it the stamp of enemy property, and the owner is, *pro hac vice*, an enemy. *Id.*
30. The interest or expectancy of creditors in enemy property arrested as prize, even though amounting to a lien upon it, does not exempt it from capture as prize. *Id.*
31. A citizen of a State in insurrection has, legally, no *locus standi* in a court of the United States to contest a prize seizure. *The D. Sargeant*, 576.
32. The claimants of part of the cargo were not citizens or residents of the enemy's country, and left it as soon after the breaking out of hostilities as they could convert their property into funds which could be conveniently carried with them; and they were entitled to a reasonable time to withdraw from their business connections in the enemy's country after the breaking out of the war. *The Sarah Starr*, 650.
33. A citizen temporarily residing in the enemy's country at the breaking out of the war is entitled to a reasonable time to collect his effects, and convert them into available and manageable funds, so as to enable him to withdraw them from the country. *The John Gilpin*, 661.
34. The transaction in this case was an honest and *bona fide* effort for that purpose. *Id.*
35. Hearing, on further proof, as to the claim by one of the owners of the vessel and cargo that he was, at the time of the breaking out of the war and at the time of the capture, a resident consul, at Richmond, of the empire of Austria, recognized by this government; that his interest is not to be regarded as enemy property, inasmuch as he intercepted the vessel and cargo while on their way to a blockaded port of the enemy, and took measures to send them to a loyal port, and had thus done everything in his power to withdraw his property from the enemy's country; that while in the

act of being withdrawn it was not liable to capture; and that he was not bound to follow it, as his duty as consul, and his right under a treaty between the United States and Austria, justified and satisfactorily explained his continued residence in the enemy's country. *The Pioneer*, 666.

36. Where a foreign consul is carrying on trade as a merchant in the enemy's country, his consular residence and character will not protect that trade from interruption by the seizure and condemnation of his property as enemy's property; and, notwithstanding his consular character, he is to be considered in all commercial transactions as on the same footing with any other resident merchant. *Id.*
37. If, on the breaking out of the war, he puts an end to his business as a merchant, continuing his residence solely as consul, his property, which is intercepted by him on its way to a blockaded port of the enemy, and prevented from entering that port, with a view to send it to a loyal one, should perhaps not be regarded as enemy property. *Id.*

See BLOCKADE, 1, 2, 38, 49, 52, 57 to 62.

CAPTURE, 2.

CARGO, 4.

CLAIM, 1.

CONDEMNATION, 1 to 20, 23, 24, 26, 27, 30 to 33, 35 to 40, 43 to 47, 51 to 57, 60, 61, 65 to 67, 69, 73 to 76, 78, 79, 81, 83, 95, 97, 99 to 103, 105 to 107, 111, 113, 117, 121, 122, 124 to 129, 133, 135, 137, 140, 151, 155 to 157, 160, 162, 171.

CONFISCATION, 1.

CONTRABAND OF WAR, 5, 6 to 8, 12 to 15, 19, 21 to 27.

DESTINATION.

EVIDENCE, 16, 26, 29, 36.

FREIGHT, 1.

FURTHER PROOF, 10.

JURISDICTION, 5, 6, 10.

LIEN, 1, 5.

NEUTRAL, 2 to 9, 12 to 16, 18 to 20.

PAPERS, 16.

PRACTICE, 1, 2, 19, 58.

PRIZE MONEY, 8.

PROBABLE CAUSE.

RESTORATION, 1, 2, 7, 10, 19, 24, 28, 31 to 33.

VESSEL, 4.

WAGES.

WAR, 1, 4.

### Equity.

See LIEN, 4, 5.

### Evidence.

1. On special order of the court the testimony of captors and witnesses present at the capture was allowed; the master, crew, and passengers not having been sent in with the vessel, but having been inadvertently allowed to leave her near the place of capture. *The Falcon*, 52.
2. The crew of the vessel were, at their request, put on shore by the captors, and no person on board of her at her capture was sent in for examination. On special leave of the court witnesses from the capturing vessel were examined. *The Zavalla*, 173.

3. The rule that the testimony for the condemnation of the prize must be obtained directly from documents or witnesses found on board of her at the time of her seizure is always adhered to, unless satisfactory reasons are shown for its non-observance. *Id.*
4. The master, who was part owner of the vessel, and who was the only witness examined in *preparatorio*, testified that he was ignorant of the blockade; but the court, on all the facts, held that he knew of it. *The Shark*, 215.
5. The general rule of evidence in prize cases is, that, in the first instance, only the ship's papers and the preparatory examinations can be adduced; but in seizures for breach of blockade the captors are permitted to put in affidavits contradicting the preparatory testimony as to the nearness of the captured vessel to the blockaded port, and the acts denoting an intent to evade the blockade. *The Joseph H. Toome*, 223.
6. One of the chief evidences of fraud is a vessel's being out of the regular course leading to the port of destination shown on her papers. *Id.*
7. Refusal of the master to answer interrogatories as to the destination of the vessel. *The Tubal Cain*, 240.
8. Oral exceptions, taken at the hearing, to the regularity and sufficiency of the proofs, on the ground that, of twenty persons composing the crew of the prize vessel, only the master and a cabin boy were produced as witnesses, overruled, on the ground that the claimant was guilty of laches in not making the objection at an earlier day. *The Elizabeth*, 250.
9. The 12th prize rule of this court is express, that the captors must produce to the prize commissioner, to be examined as witnesses, three or four, if so many there be, of the company or persons who were captured with or who claim the captured property; and, in case the capture be a vessel, the master and mate, or supercargo, if brought in, must be two. *Id.*
10. An omission to observe this rule is an irregularity, which, if properly and sensibly taken advantage of by a claimant, might lead to the rejection of the proofs offered, or compel the libellants to show a satisfactory excuse for the omission. *Id.*
11. In this case the court, of its own motion, on seeing that the rule had not been complied with, suspended a final decree in the case, and gave leave to the libellants to submit proofs to the court within ten days, showing why the terms of the rule had not been observed. *Id.*
12. Within the time so allowed satisfactory evidence was produced to the court that no malpractice had been intentionally allowed in the case, and that the failure to produce more than the two witnesses was the result of misapprehension or accident, and not of any purpose to disregard the rule. *Id.*
13. Invocation of proofs from another case, on the allegation that the consignor and consignee of the cargo were the same in the two cases, and that the shipments had relation to a common commodity and purpose, a bill of lading found on board of one vessel covering cargo on both vessels. *The Albert*, 280.
14. The failure to bring in any one of the officers or crew of the vessel but the mate, excused. *The John Gilpin*, 291.
15. The vessel was, after her capture, appropriated to the use of the United States, and was not sent into port. Her cargo was sent in by another vessel, and was arrested in this suit. None of her company were sent in as witnesses. A person present at the capture was, by order of the court, examined as a witness. *The Wave*, 329.
16. The court will take judicial notice of the fact that the shipper at Nassau, a neutral port, of a cargo captured as prize, for an alleged attempt to violate the blockade, is a person who is shown by the records of the court to have been actively engaged in trading to and from the blockaded ports of the enemy. *The Minna*, 333.
17. Under the special circumstances of this case, the master of the vessel, who had been examined as a witness in *preparatorio*, was allowed, on the application of the claimants, to be re-examined on one of the standing interrogatories, on condition that he should at the same time be examined on certain special interrogatories framed by the court. *The Peterhoff*, 345.
18. By the regular course of procedure in a prize suit, a witness cannot claim a right to modify or enlarge his testimony after it has been formally completed and submitted to the court. *Id.*
19. The court, on the application of the libellants, permitted the cook of the vessel, one of the witnesses, to be re-examined on one of the standing interrogatories, it appearing from his affidavit that he did not fully answer that interrogatory in relation to certain papers on board, although he had testified to the omitted facts on an examination made of him on board of the capturing vessel. *The Stephen Hart*, 387.
20. The court, on the application of the libellants, permitted the first mate of the vessel, one of the witnesses, to be re-examined on the standing interrogatories, it appearing from his affidavit that he had the virtual control of the vessel on her voyage, and had, on his examination, not disclosed the truth as to the true destination of the vessel and cargo. *Id.*
21. The question of the admissibility of depositions given on the re-examination of persons found on board of a captured vessel, is one resting in the sound discretion of the court. *Id.*
22. If, in this suit, the case, upon the depositions as originally taken, without the re-examinations of the two witnesses, were a clear one in favor of the claimants, and free from all doubt, the court would hesitate, perhaps, to admit the re-examinations. *Id.*
23. A prize case is, in the first instance, to be tried on evidence coming from the captured. If, upon such evidence, no doubt arises, the property is to be restored; and the privilege, on the part of the captors, of giving further proofs, is, in such cases, rarely granted. *Id.*
24. Within these principles the court has endeavored, in all proper cases, to exhaust the knowledge of the persons found on board of captured vessels. *Id.*

25. Invocation of proofs from two other cases on the docket of the court for trial at the same time with this case, allowed, under the 33d standing rule of the court in prize cases. *The Springbok*, 434.
26. Held, that the inference was a fair one, that the cargo of the vessel in this case had the same destination which the court had found to be the destination of the cargoes in the other two cases, that is, to the enemy's country through a breach of the blockade. *Id.*
27. In addition to the practice of invocation, it is the uniform practice of prize courts to take cognizance of the *status* of the claimants who appear before it, with a view to see whether they come with clean hands, or whether they have been before engaged in a traffic similar to that with which they are charged in the particular case. *Id.*
28. The attorney for the United States is, by law, official master of suits prosecuted by the United States in the prize court, and has authority, at his discretion, to offer to or withhold from the consideration of the court any particular of testimony relative to a prize suit in prosecution in court, under his discretion. *The Peterhoff*, 463.
29. The court refused to allow a witness, who was a passenger on the prize vessel, and who had been examined in *preparatorio*, to be re-examined for the purpose of showing his personal loyalty, on the ground that the question of his individual loyalty or disloyalty was of no importance, and that his political *status* was shown to be that of an enemy. *Id.*
30. Under the special circumstances of this case the court permitted the master of the prize vessel to be re-examined on the standing interrogatory as to the destruction of papers, and ordered him to be at the same time examined on three special interrogatories framed by the court, although the testimony of all the witnesses had been filed in court and an order made that the proofs be opened. *Id.*
31. The court struck out from the testimony of the master, as irrelevant, a statement made by him as to another witness, which was not responsive to any part of the standing interrogatories. *Id.*
32. A prize commissioner has no right to put to a witness any interrogatories except the standing ones, or those specially framed by the court for the particular case. *Id.*
33. The court rejected, as evidence, a statement made on the record by the prize commissioner in regard to the reluctance of a witness to answer. *Id.*
34. A document produced for the first time at the hearing, and forming no part of the depositions in the case, is not admissible in evidence. *Id.*
35. Although such document, if properly put in evidence, would be regarded by the court as a very material piece of evidence against the vessel and her cargo, yet the court did not, upon the proofs in the case, entertain any such doubt upon the question of condemning the vessel and cargo, as to make it proper to direct an order for further proof in order to permit the introduction in evidence of the document. *Id.*
36. A prize court will not shut its eyes to a well-known and obvious system of conducting trade with the enemy in contraband articles. *Id.*
37. The examination of witnesses in a prize case should be confined to persons on board of the captured vessel at the time of the capture, unless upon special permission of the court first obtained. *The Alliance*, 646.
38. In this case none of the crew on board at the time of the capture, eleven in number, were examined; but, instead, two seamen who had been discharged from the vessel before her capture were examined, and no explanation of the reason for this was given. This was a great irregularity, which cannot be overlooked or disregarded in a consideration of the proofs. *Id.*
- See BLOCKADE, 28, 29, 36, 45, 50.  
CAPTOR.  
CONDEMNATION, 5, 26, 59, 60, 63.  
COSTS, 4.  
DESTINATION, 2.  
DISTRICT ATTORNEY, 9.  
ENEMY, 10, 13, 23, 24.  
FURTHER PROOF.  
INVOICE, 2.  
LIEN, 1.  
MASTER, 2.  
NEUTRAL, 7 to 9.  
PAPERS, 10.  
PRACTICE, 1, 2, 7, 9, 13 to 19, 31, 34 to 36, 39 to 42, 49, 50, 54.  
RESTORATION, 13.  
SPOILIATION, 2 to 4, 13, 17, 19, 21, 23.
- Exception.**
- See EVIDENCE, 8.  
PRACTICE, 29, 50, 51.
- Excuse.**
- See RESTORATION, 5, 6.
- Execution.**
- See SALE, 6.
- Expert.**
- See CONDEMNATION, 79, 100.
- F.**
- Fees.**
- See APPRAISER.  
COSTS.  
DISTRICT ATTORNEY.  
PRIZE COMMISSIONER.
- Flag.**
- See CARGO, 4.  
CONDEMNATION, 107.  
VESSEL, 1.
- Forfeiture.**
- See BLOCKADE, 53, 71.  
CONDEMNATION, 113.  
CONFISCATION, 3.  
ENEMY, 19.  
LIEN, 2, 6, 7.  
NEUTRAL, 6.

See PRACTICE, 53.  
SPOILIATION, 2.

### Fraud.

See BLOCKADE, 19 to 21.  
CONDEMNATION, 52, 76, 79, 93, 120, 121, 127, 128.  
CONTRABAND OF WAR, 4, 9 to 11, 13, 24 to 26.  
ENEMY, 10, 11, 21.  
EVIDENCE, 6.  
FURTHER PROOF, 9.  
PAPERS, 2 to 8, 11 to 15, 20, 21.

### Freight.

1. The vessel having been restored, as belonging to loyal owners, and part of her cargo having been condemned as enemy property, captured on a voyage from New Orleans to New York during the war, the master of the vessel applied to be paid, out of the proceeds of the condemned cargo, the freight upon it for the voyage: *Held*, that the application must be denied. *The Hannah M. Johnson*, 160.
  2. Property captured as prize at Newbern, N. C., having been shipped to New York by the captor on board of a merchant vessel on freight under a bill of lading signed at the time, conditioned for its delivery at New York on payment of the freight therein stipulated, the court ordered the freight to be paid by the marshal out of the proceeds of the property in court. *858 Bales of Cotton*, 325.
  3. On general principles, property captured as prize belongs in law to the government, and is chargeable with the same liabilities as if it had been owned by individuals and had been benefited under contracts direct or implied. *Id.*
  4. The United States, in relation to the proprietorship of property, have in their public capacity like authority and remedies and are subject to like liabilities in dealing with it through legal agencies or otherwise as natural persons, except, perhaps, in respect to the operation of laws of limitation or rules resting upon usages under the law merchant. *Id.*
- See CONTRABAND OF WAR, 9, 24.  
LIEN, 3.

### Further Proof.

1. Further proof allowed to be given by the libellants on the question of violation of blockade. *The Sarah Starr*, 69.
2. The captors allowed to produce further proof on the question of breach of blockade. *The Prince Leopold*, 89.
3. Both parties allowed to give further proof as to intention to violate the blockade. *The Jane Campbell*, 101.
4. Condemnation withheld, and proceedings suspended for sixty days, to allow the libellants to produce testimony in support of the libel, there being no testimony from witnesses present at the capture. *The Annie*, 209.
5. There being probable cause, on all the evidence, to believe that the vessel was engaged in an attempt to violate the blockade, the court suspended a final decision, with leave to the libellants to put in further proofs as to the place at which

the capture was made, and as to the purpose of the voyage, at any time within one year. *The Levi Rowe*, 323.

6. Rehearing, on further proofs furnished by the claimant of seven-eighths of the vessel. *The Napoleon*, 357.
  7. A rehearing on further proofs denied to the claimant. *The Mary Jane*, 363.
  8. Leave given to the claimants to move within four days for a rehearing on further proofs. *The Rising Dawn*, 368.
  9. The privilege of further proof is always forfeited when there has been any deception or fraud. *The Springbok*, 434.
  10. In this case, no witnesses having been sent in with the vessel, and no reason being furnished for not producing them, and the commander of the capturing vessel being examined by order of the court, but not furnishing any proof of any violation of the blockade, or that the captured property was enemy property, the court ordered the case to stand over for further proof as to the criminality of the vessel, and in order that the absence of all evidence from on board of her might be accounted for, and allowed six months' time for that purpose. *The Nellie*, 553.
  11. Further proof ordered as to the neutral ownership of the cargo; and further proof allowed as to the proprietary interests in the vessel, the vessel and cargo being claimed by the same party. *The Alliance*, 646.
  12. Further proof ordered as to the neutral ownership of the vessel and cargo at the time of capture. *The Gondar*, 649.
- See CONDEMNATION, 5, 26, 59, 60, 63, 166.  
ENEMY, 10, 35.  
EVIDENCE, 11, 12, 23, 35.  
PRACTICE, 19, 49, 58.  
RESTORATION, 13, 17, 34.  
SPOILIATION, 19.

### G.

#### Great Britain.

See NEUTRAL, 5.

#### Gambet.

See CONDEMNATION, 74.

### H.

#### Hearing.

See BAIL, 1.  
EVIDENCE, 8.  
PRACTICE, 27, 31, 35, 36, 50.

#### Hypothecation.

See CONDEMNATION, 4.

### I.

#### Ignorance.

See CARGO, 5.  
MASTER, 2 to 4.

#### Incumbrance.

See LIEN, 6.

#### Ingress.

See BLOCKADE, 3, 5, 15.

**Inquiry.**

See BLOCKADE, 13, 24, 26, 27, 30, 31, 65, 66, 69 to 73.

**Inspection.**

See PRACTICE, 25.

**Insurance.**

See CLAIM, 2.

**Insurrection.**

See CONFISCATION, 1.  
CONDEMNATION, 17, 20, 22, 113.  
ENEMY, 12, 19, 22, 31.  
WAR, 1 to 4.

**Intent.**

See BLOCKADE, 29 to 33, 72.  
DESTINATION, 1.

**Interrogatory.**

See EVIDENCE, 7, 30 to 32.

**Intervention.**

1. Intervention by a neutral consul for the alleged owners of vessel and cargo. *The Elizabeth*, 250.

**Invocation.**

See EVIDENCE, 13, 25 to 27.  
PRACTICE, 22.

**Invoice.**

1. No invoices of the cargo were found on board of the vessel. *The Springbok*, 434.  
2. The absence from on board of a vessel in time of war, of invoices of her cargo is laid down by all the authorities as being a suspicious circumstance, as affecting the question of the honesty of the commerce. *Id.*

See CARGO, 2.  
CONDEMNATION, 4.  
PAPERS, 18.

**J.****Judge.**

See PRACTICE, 43, 44.

**Jurisdiction.**

1. It is the usage of prize courts to exercise jurisdiction over property captured on board a vessel without having the vessel itself brought within their cognizance. *The Edward Barnard*, 122.  
2. Where a vessel captured as prize is appraised by a naval survey, and appropriated to the use of the United States, and her papers and crew are, with the appraisal, sent to this court, proceedings against her in prize are regular, although she is not brought before the court. *The Advocate*, 142.

3. The vessel was destroyed by her captors because unfit to be sent in for adjudication. The cargo was sent in: *Held*, that the court had judicial cognizance of the capture of the vessel without having her within its territorial jurisdiction. *The Zavalla*, 173.

4. Property captured as prize is under the control of the court from the time it is delivered to the court by the prize-master until it is finally disposed of, and the filing of a libel is not necessary to give the court cognizance of the property. *The Memphis*, 202.

5. Property seized by an armed vessel of the United States empowered to make prizes, while afloat in an enemy port, on board of an enemy vessel, is lawful prize under the law of nations. *Bags of Rice*, 211.

6. Enemy property captured by a public vessel in an enemy port, although, when seized, stored in a warehouse on land, near the water, held, under the facts in this case, to be lawful prize. *Casks of Rice*, 211.

7. In this case, after the vessel had been libelled as prize, a libel on the instance side of the court was filed against her to recover a private claim. The court dismissed the latter libel, holding that the case was under the exclusive jurisdiction of the prize court; that the vessel, while under arrest as prize, could not be attached in a private action, and that relief must be sought in the prize court. *Harlan v. The Nassau*, 220.

8. It is no legal ground of objection to the jurisdiction of the court in a prize case that the arrest was made out of its territorial authority. 282 *Bales of Cotton*, 302.

9. The court has jurisdiction, under the law of nations and by municipal law, when the subject-matter of the suit is prize of war, without regard to the locality of the arrest or cause of action; and it is unimportant to the question of prize or no prize whether the capturing land and sea forces act in conjunction or separately. *Id.*

10. The prize court has cognizance of all captures in an enemy country made in creeks, havens, and rivers, when made by a naval force solely, or in co-operation with land forces. *Id.*

11. In prize cases, the court of that district into which the property is carried and proceeded against has jurisdiction. *The Peterhoff*, 463.

12. The mere carrying of a vessel, or of her cargo, seized on the high seas as prize of war, into any particular district, without the institution there of any proceedings in prize, cannot affect or take away the jurisdiction over the property of the district court of another district, in which the proceedings against the property may be instituted after the property has been carried into such other district. *Id.*

**See ARREST.**

CAPTURE, 2 to 5.  
CONFISCATION, 3.  
DISTRICT COURT.  
PRACTICE, 20, 43 to 47, 52, 55.  
SALE, 6 to 8.

**L.****Laches.**

See EVIDENCE, 8.

**Law of Nations.**

See BLOCKADE, 32.

CAPTURE, 6.  
 CONDEMNATION, 128.  
 ENEMY, 18, 22.  
 JURISDICTION, 5, 9.  
 LIEN, 6, 7.  
 NEUTRAL, 1, 3 to 5, 13 to 16.  
 SPOILIATION, 2.  
 WAR, 2 to 4.

**Letters.**

See CONDEMNATION, 26.  
 NEUTRAL, 2.

**Libel.**

See CAPTURE, 8.  
 CONDEMNATION, 140.  
 FURTHER PROOF, 4.  
 JURISDICTION, 4, 7.  
 PLEADING, 5, 10, 11.  
 PRACTICE, 5, 23, 24, 26, 33, 43, 51.

**Libellants.**

See AUCTIONEER, 3.  
 CONDEMNATION, 141.  
 EVIDENCE, 10, 11, 19, 20, 23.  
 FURTHER PROOF, 4, 5.  
 PRACTICE, 32, 37, 39 to 42, 48, 51, 53, 57.  
 RESTORATION, 17.  
 VESSEL, 2.

**License.**

See CONDEMNATION, 79.  
 NEUTRAL, 6.

**Lien.**

1. What is necessary to be proved by parties claiming a lien for advances on enemy property captured as prize in an enemy vessel. *The Lynchburg*, 3.
2. The claim of the owner of the acquitted part of a vessel to a lien upon the condemned part for outlays in fitting the vessel disallowed, and the claimant referred to the power of the Secretary of the Treasury, under the 8th section of the act of July 13, 1861, (12 U. S. Statutes at Large, 257.) to remit the forfeiture. *The Mary McRae*, 91.
3. A mortgagee of captured property has no right to assert his mortgage in a prize court, and demand its payment out of the proceeds of the property if condemned. All liens upon captured property, which are not in their very nature open and apparent, like that for freight upon the cargo laden on board a captured vessel, are utterly disregarded by prize courts. *The Delta*, 133.
4. No equity of lien or claim, however urgent, held by innocent third parties, is allowed to prevail, in a prize court, against property seized while in use by a belligerent. *The Napoleon*, 296.

5. It is a settled principle of prize procedure that belligerent captors are discharged of liens or equities of neutral creditors resting upon the effects of an enemy seized at sea. *The Sally Magee*, 382.

6. Property seized as prize of war under the law of nations is discharged from all latent liens or incumbrances, and in this respect is distinguishable from property seized as forfeited under the municipal laws of a State. *The Nassau*, 665.

7. Vessels and cargoes seized for a violation of the laws of blockade, or as enemy property, are prize of war under the law of nations, and not under municipal authority. *Id.*

8. Decree of the district court, refusing to recognize a lien upon the vessel for repairs made and materials furnished prior to the war, affirmed. *Id.*

See ENEMY, 30.

OWNER.

PRACTICE, 37, 38.

**Log-Book.**

See PAPERS, 1, 9.

SPOILIATION, 2, 5, 6, 10 to 13, 25.

**Loyalty.**

See EVIDENCE, 29.

**M.****Mail.**

1. On motion of the district attorney, acting under instructions from the government, a mail bag, under the official seal of the general post office of Great Britain, found on board of the prize vessel, was ordered by the court to be delivered to the district attorney, to be by him disposed of conformably to the instructions of the government. *The Peterhoff*, 463.

**Manifest.**

See BILL OF LADING.

CARGO, 2.

PAPERS, 17.

**Marshal.**

See AUCTIONEER.

COSTS, 3 to 6, 14.

FREIGHT, 2.

PRACTICE, 4, 56.

PRIZE COMMISSIONER, 8.

**Master.**

1. A motion to redeliver to the master his nautical instruments denied, he having been actively engaged in acts of hostility against the rights of the United States and the public law. *The Onachita*, 306.
2. Ignorance of the master as to his cargo, and as to any of it being contraband of war. *The Sunbeam*, 316.
3. Alleged ignorance of the master as to the reason assigned for the capture of his vessel. *The Springbok*, 434.

4. It is a principle of prize law, that a master cannot be permitted to aver his ignorance of the contents of contraband packages on board of his vessel, and that he is bound, in time of war, to know the contents of his cargo. *Id.*
- SEARCH, 2.
5. A neutral owner of a vessel is, as a general rule, held responsible for all the acts of the master of his vessel committed in violation of the rights of a belligerent. *The Peterhoff*, 463.
6. A master is, in time of war, bound to know the contents of his cargo, and cannot be permitted to aver his ignorance of the contents of contraband packages on board of his vessel. *Id.*
- See ADVANCE.  
BLOCKADE, 7 to 9, 53, 65, 66, 70 to 72.  
CARGO, 5.  
CONDEMNATION, 79, 140.  
CONTRABAND OF WAR, 8, 10 to 13, 25, 26.  
ENEMY, 15, 20.  
EVIDENCE, 1, 4, 7 to 9, 17, 30, 31.  
FREIGHT, 1.  
PRACTICE, 7 to 9, 18, 39 to 42.  
RESTORATION, 7.  
SEARCH, 2.  
SPOILIATION, 7 to 9, 17, 20, 21, 24.  
VESSEL, 3, 4.

**Mate.**

- See ENEMY, 20.  
EVIDENCE, 9, 14, 20.  
SPOILIATION, 18.

**Materials.**

- See LIEN, 8.

**Merchant.**

- See ENEMY, 35 to 37.

**Mention.**

- See BAIL.  
PRACTICE, 5, 15, 21, 51.

**Mortgage.**

- See LIEN, 3.

**Motion.**

- See PRACTICE, 5, 22, 29, 34 to 37, 43, 44, 48, 50.

**N.****Nautical Instruments.**

- See MASTER, 1.

**Navy.**

- See CAPTOR.  
CAPTURE, 6.  
JURISDICTION, 10.

**Navy Department.**

- See CAPTURE, 6.

**Necessity.**

- See BLOCKADE, 28, 50, 56.

**Neutral.**

1. There is no public or municipal law which inhibits a neutral vessel, on a lawful voyage from Washington city to Halifax, from sailing at night on the Potomac river. *The Tropic Wind*, 64.
2. The questions as to what are considered in prize law contraband letters or despatches when carried to an enemy, and as to what personal intercourse with the enemy is allowed by the prize law, discussed. *Id.*
3. Property belonging to a neutral who is domiciled and carrying on trade at an enemy port is enemy property. Traffic with the enemy is forbidden by public law. A sale of property during hostilities in an enemy port, by a person domiciled and trading there, to a neutral, does not pass the title, and the property still remains subject to capture as prize. *The Sarah Starr*, 69.
4. A neutral domiciled and trading in a belligerent port can neither hold title to property acquired there during war, nor confer it upon others, against the interests imparted by capture at sea to the adversary belligerent. *Id.*
5. There is nothing in the treaties of November 19, 1794, (8 U. S. Statutes at Large, 116,) December 24, 1814, (*Id.*, 218,) and July 3, 1815, (*Id.*, 228,) between the United States and Great Britain, which gives to a British merchant, resident in a port of the seceded States during the war, an immunity from the general principles of public law applicable to resident neutral merchants. *Id.*
6. The illegality of sailing under an enemy license is legal cause for the forfeiture of a neutral vessel. *The Alliance*, 262.
7. No legal transfer of the vessel shown from her enemy owner to her neutral claimant. *The Maria*, 283.
8. No *bona fide* purchase of the vessel shown by her neutral claimant from her enemy owner. *The Ella Warley*, 288.
9. There is no proof of the *bona fide* purchase of the vessel by her neutral claimant from her enemy owner. *The Belle*, 294.
10. The question whether or not property laden on board of a neutral vessel was being transported in the business of lawful commerce is not to be decided by merely deciding the question as to whether the vessel was documented for and sailing upon a voyage between two neutral ports. *The Stephen Hart*, 387.
11. The commerce is in the destination and intended use of the property laden on board of the vessel, and not in the incidental, ancillary, and temporary voyage of the vessel, which may be but one of many carriers through which the property is to reach its true and original destination. *Id.*
12. Nor is the unlawfulness of the transportation of contraband goods determined by deciding the question as to whether their immediate destination was to a port of the enemy. *Id.*



13. The proper test to be applied is whether the contraband goods are intended for sale or consumption in the neutral market, or whether the direct and intended object of their transportation is to supply the enemy with them. To justify the capture it is enough that the immediate object of the voyage is to supply the enemy, and that the contraband property is certainly destined to his immediate use. *Id.*
14. If a contraband cargo is really destined, when it leaves its neutral port of departure, for the use of the enemy in the country of the enemy, and not for sale or consumption in a neutral port, no principle of the law of nations, and no consideration of the rights and interests of lawful neutral commerce, can require that the mere touching at such neutral port, either for the purpose of making it a new point of departure for the vessel to a port of the enemy, or for the purpose of transshipping the contraband cargo into another vessel, which may carry it to the destination which was intended for it when it left its port of departure, should exempt the vessel or the contraband cargo from capture as prize of war. *Id.*
15. The division of a continuous transportation of contraband goods into several intermediate transportations, by means of intermediate voyages by different vessels carrying such goods, cannot make a transportation which is, in fact, a unit, to become several transportations; although, to effect the entire transportation of the goods requires several voyages by different vessels, each of which may, in a certain sense and for certain purposes, be said to have its own voyage; and although each of such voyages, except the last one in the circuit, may be between neutral ports. Nor can such a transaction make any of the parts of the entire transportation of the contraband cargo a lawful transportation, when the transportation would not have been lawful if it had not been thus divided. *Id.*
16. The inception of the voyage completes the offence. From the moment that the vessel with the contraband articles on board quits her port on the hostile destination, she may be legally captured. It is not necessary to wait until the ship and goods are actually endeavoring to enter the enemy's port. The voyage being illegal at its commencement, the penalty immediately attaches and continues to the end of the voyage, at least so long as the illegality exists. *Id.*
17. A neutral vessel, laden with a neutral cargo, may lawfully trade between neutral ports, in time of war, in all descriptions of merchandise, contraband or otherwise, without being liable to seizure by a belligerent. *The Paerhoff*, 463.
18. But a seizure is justifiable if a vessel be engaged in carrying contraband of war for or to the enemy, or to the port of the enemy; and all contraband goods, even though belonging to neutrals and found in neutral bottoms, are liable to capture and condemnation, if seized by a belligerent while on a destination for the use of the enemy of such belligerent. *Id.*
19. A neutral friend to both belligerents cannot transport over the sea the effects of one to the use of the other, though also his friend. He is not allowed to aid and benefit the commerce of one belligerent to the prejudice of the other. *The Mary Clinton*, 556.
20. By investing his means, and participating in the trade and mercantile concerns of a belligerent nation, a neutral has, in effect, affixed to him the national character of the places at which he carries on his commerce. *Id.*
- See BLOCKADE.**  
 CONDEMNATION, 4, 52, 76, 127, 128, 162.  
 CONTRABAND OF WAR, 12 to 14, 19, 23, 26.  
 DESTINATION, 2.  
 ENEMY, 1, 6 to 11, 13, 14, 23 to 25, 29.  
 EVIDENCE, 16.  
 FURTHER PROOF, 11, 12.  
 INTERVENTION.  
 LIEN, 5.  
 MASTER, 5.  
 PAPERS, 16.  
 PLEADING, 4.  
 PRACTICE, 2, 8, 50.  
 RESTORATION, 3 to 5, 11, 26, 34, 35.  
 SEARCH, 2.  
 SPOILATION, 22.  
 WAR, 2.
- Notice.**
- See BLOCKADE**, 3, 4, 6, 8 to 11, 13, 16 to 18, 24, 27, 29, 32, 33, 46, 53, 65, 66.  
 CONDEMNATION, 65.  
 PRACTICE, 43, 51.
- O.**
- Onth.**
- See CARGO**, 3.  
 CLAIM, 1.  
 PLEADING, 4, 6, 12.  
 PRACTICE, 25, 26, 61.
- Officers.**
- See COSTS**, 7.
- Order.**
- See PRACTICE**, 43, 44.
- Owner.**
1. The title of the absolute owner prevails, in a prize court, over the interest of a lien-holder, whatever the equities between those parties may be. *The Winifred*, 2.
- See BLOCKADE**, 8, 52, 53, 65, 66, 68.  
 CARGO, 1.  
 CONDEMNATION, 5, 65, 73, 140.  
 CONTRABAND OF WAR, 3, 5, 6 to 13, 22, 24 to 26.  
 ENEMY, 15, 21, 24, 35.  
 EVIDENCE, 4.  
 FURTHER PROOF, 11, 12.  
 INTERVENTION.  
 MASTER, 5.  
 NEUTRAL, 7 to 9.  
 PAPERS, 13, 16.  
 PLEADING, 4, 6, 12.  
 PRACTICE, 51.  
 RESTORATION, 18 to 20.  
 VESSEL, 3.

## P.

**Papers.**

1. Effect of the absence of a log-book unaccounted for in time of war. *The Joseph H. Toone*, 223.
  2. Simulated papers as to the destination of the vessel. *Id.*
  3. False destination on the vessel's papers. *The Lizzie*, 243.
  4. False destination stated in the vessel's papers. *The Stettin*, 272.
  5. False and simulated papers as to the destination of the vessel. *The Robert Bruce*, 275.
  6. False and simulated papers as to the destination of the vessel. *The Revere*, 276.
  7. False papers as to destination of vessel and cargo. *The Albert*, 280.
  8. False papers as to destination of vessel. *The Maria*, 283.
  9. Vessel running without any log. *The Ella Warley*, 288.
  10. Although her clearance was from Nassau for Philadelphia, there is no written evidence in her papers that she was put upon or attempted to pursue that voyage. *The Belle*, 294.
  11. False destination on the papers of the vessel. *The Onachita*, 306.
  12. False destination on the vessel's papers. *The Sunbeam*, 316.
  13. A false destination and a false ownership of the vessel were alleged on her papers. *The Florida*, 327.
  14. False papers as to the voyage of the vessel. *The Mary Jane*, 363.
  15. The papers found on board of the vessel, so far as they represent Nassau as the ultimate destination of the cargo, were false and simulated. *The Springbok*, 434.
  16. In time of war a vessel should be furnished with documents showing the particulars of her cargo, especially where the vessel is documented for a neutral port in the vicinity of the ports of one of the belligerents, and that neutral port is one extensively used as a mere port of call and of trans-shipment for vessels and cargoes bound to ports of the enemy, and where the parties claiming to own the cargo have been engaged in previous adventures connected with running the blockade, or introducing cargoes of contraband goods into the enemy's country. *Id.*
  17. Deficiencies in the manifest in respect to the contraband articles on board. *The Peterhoff*, 463.
  18. The absence of invoices as to some of the contraband articles. *Id.*
  19. Defects in the bills of lading. *Id.*
  20. False destination on the papers of the vessel. *The Ella Warley*, 646.
  21. False and simulated papers as to the destination of the vessel. *The Sunbeam*, 656.
- See BILL OF LADING,  
BLOCKADE, 9, 20, 22, 23, 25, 30.  
CARGO, 2.  
CONDEMNATION, 24, 26, 52, 76, 79, 93, 120, 124, 127, 128, 140.  
CONTRABAND OF WAR, 10 to 13, 25, 26.  
ENEMY, 10, 13.  
EVIDENCE, 3, 5, 6, 19, 30, 34, 35.  
INVOICE.  
JURISDICTION, 2.  
NEUTRAL, 10.

See PLEADING, 6.  
PRACTICE, 1, 19, 23, 25, 31, 56.  
PROBABLE CAUSE.  
SEARCH.  
SPOILIATION.

**Pass.**

See CONDEMNATION, 107.

**Passenger.**

1. Character and status of some of the passengers on the vessel. *The Peterhoff*, 463.
- See EVIDENCE, 1, 29.

**Pleading.**

1. The pleadings in prize cases should be simple, direct, and free from technicalities. *The Hiawatha*, 1.
  2. Mode of pleading in an answer and claim commented on. *The Hannah M. Johnson*, 2.
  3. What statements are necessary in an answer and claim. *The Lynchburg*, 3.
  4. Motion by the owner of the cargo for leave to put in a claim to that, as neutral property, shipped from one neutral port to another, there being, in the proposed claim, averments denying that the vessel violated or attempted to violate the blockade, and invoking the test oath of the owner of the vessel previously made to his claim. The court allowed the claim to be filed, omitting the averments in question. *The Joseph H. Toone*, 134.
  5. An answer or claim in a prize suit need contain nothing more than a general denial of the grounds of condemnation alleged in the libel. *Id.*
  6. A test oath is an oath of ownership simply, and all papers annexed to such oath will be stricken from the record as irregular. The fact of the ownership, with a general denial that the captured property is lawful prize of war, is all that it is proper to include in the claim. *The Delta*, 133.
  7. A claim in a prize suit should be one of property merely, and should only put in issue, by a simple denial, the validity of the capture. *The Cheshire*, 151.
  8. A claim and answer in a prize cause should be confined to the issue of prize or no prize. *The John Gilpin*, 291.
  9. A claim and answer in a prize suit cannot put in issue anything but the question of prize or no prize. *The Napoleon*, 295.
  10. A libel in a prize case need contain no further averment than that the property seized is prize of war. *The Sally Magee*, 362.
  11. Objections taken in the claims to the sufficiency of the libel in point of pleading overruled. *The Mary Clinton*, 556.
  12. Effect of a claim and answer in a prize suit put in and verified by an agent and not by the owner. *The D. Sargent*, 576.
- See CLAIM.  
PRACTICE, 13, 22 to 26, 28, 29, 49.

**Possession.**

See CONDEMNATION, 52.

**Practice.**

1. The practice in American prize courts is to make final condemnation of enemy property at the hearing of the cause upon the ship's papers and the evidence *in preparatorio*. *The Falcon*, 52.
2. The suspension of a year and a day after a default is allowed only when it is doubtful upon the evidence whether the property captured belongs to the enemy or is neutral. *Id.*
3. The vessel and cargo having been condemned, and an appeal taken by the claimants to the circuit court, this court, on evidence that the cargo was perishable, and the vessel and cargo liable to deterioration, and on the consent of all the parties, directed the prize commissioners to sell the vessel and cargo at public auction, and to bring the proceeds of sale into court. *The Pioneer*, 61.
4. The act of March 3, 1849, (9 U. S. Stat. at Large, 378, § 8,) commented on in respect to the disposition of the proceeds of a sale by a marshal. *Id.*
5. Claimants of property seized as prize, who complain of irregularities, delay, and acts of negligence on the part of the captors, must proceed according to rule 23 of the standing prize rules—that is, by libel and monition, and not by special motion—to discharge the arrest. *The Tropic Wind*, 64.
6. The practice in prize proceeding in the courts of the United States is governed by the rules of admiralty law disclosed in the English reports when not regulated by decisions or rules of the American courts. *The Prince Leopold*, 89.
7. The settled rule of the prize courts is to require the captors of a vessel to bring in for examination her master and principal officers and some of her crew, and the examination must be confined to them unless special permission of the court is obtained to examine other persons. *The Jane Campbell*, 101.
8. Prize law inhibits, under the disallowance of the right of prize to the captors, and the positive infliction of punishment by penalties and costs, any irregularities against the property seized or the captured crew, especially where the latter are neutral. *Id.*
9. The burden is on the captors to prove the existence of an overruling necessity justifying the spoliation of property found on the prize, or the separation of the officers or crew from the captured vessel, or the omission to send them into port with the prize for examination. *Id.*
10. A claimant in a prize suit cannot put in a special claim or answer leading to issues other than the one simply of prize or no prize without the assent of the United States attorney or the special order of the court. *The Louisa Agnes*, 107.
11. The question discussed as to the proper method of investigating in prize cases acts of misconduct committed by captors on the prize property and the officers and crew of the vessel subsequent to their arrest. *Id.*
12. The general rule in respect to captures by public ships is that the actual wrongdoer alone is responsible for any wrong done or illegality committed on the prize, excepting acts done by members of the seizing vessel in obedience to the orders of their superiors. *Id.*
13. This court establishes this practice—that the right of reclamation for damages, in cases of captures made by public vessels, must be pursued by the parties averring the grievance and tort committed upon them by plea and proof, which admit of counter allegations and full evidence under them. *Id.*
14. An affidavit annexed to a claim is extrajudicial and is not testimony in the cause. *Id.*
15. Claimants ordered to sue out a monition to the captors, and file and serve the allegations and proofs on which they claim damages. *Id.*
16. The libel charged that the vessel, while attempting to violate the blockade, was burned, and that part of her cargo was saved as prize, but no proof was given in support of the libel. The court allowed the libellants thirty days to produce evidence, falling which the libel to be dismissed. *The Thomas Watson*, 120.
17. Where the testimony of witnesses from the delinquent vessel is dispensed with, adequate proof must be supplied, *aliunde*, of the *delictum* charged, before a condemnation will be awarded. *Id.*
18. None of the officers or crew of the vessel were sent into this port with her, or produced with her to be examined as witnesses, but the master subsequently appeared and was examined *in preparatorio*. *The Henry Middleton*, 121.
19. Vessel and cargo held to be enemy property on the papers found on board; but no legal proofs being furnished of the actual capture, or of any inability to furnish proof of the time and place of seizure, a decree of condemnation was deferred until such testimony should be produced, or an excuse be furnished for the admission of secondary proof. *The Sarah and Caroline*, 123.
20. There having been no appearance on due return of the warrant of arrest of the cargo, and the capture having vested jurisdiction in the court over the property seized, the court ordered the cargo to be sold and the proceeds to be brought into court. *Id.*
21. The vessel was not arrested on the monition. *Id.*
22. The invocation of papers is to be obtained, not by pleading, but by motion. *The Joseph H. Toome*, 124.
23. The requisites of a libel in prize stated. *The Empress*, 146.
24. The proper form of a libel in prize is a mere general allegation of prize. *Id.*
25. The practice in prize proceedings stated as to the claim and test oath, the interest of the claimant in the property, and the inspection by the claimant of the ship's papers and the proofs *in preparatorio*. *Id.*
26. The defence, in the claim, must be limited to a contestation of the allegations of the libel. *Id.*
27. The first hearing is limited to the inquiry whether the captured property is prize of war or not. *Id.*

28. It is irregular to subjoin to the claim anything besides a test oath. *Id.*
29. Such irregularities will be corrected on motion without formal exceptions. *Id.*
30. The rules of practice in admiralty are the basis of the practice in prize in our national courts. *The Ware*, 148.
31. The papers found on board the captured vessel, and the testimony of the witnesses in *preparatorio*, can alone be considered on the hearing, in the first instance, in the determination of the issue. *The Cheeshire*, 151.
32. After a decision condemning the vessel and cargo, but before the entry of the decree, the libellants moved for an immediate sale of vessel and cargo, as being in a perishing condition. The court held, on the facts, that no necessity was shown for such sale. *The Cheeshire*, 165.
33. The court, during the present war, always regards, by force of the standing prize rules, a decree by default, regularly obtained, as equivalent to an admission on the record of the offence charged in the libel. *The Zenalla*, 173.
34. Motion founded on the report of the prize commissioner for an order to sell the cargo, pending the hearing, denied, the proposed sale being earnestly opposed by the claimants, and there being a strong preponderance in the number of witnesses against the necessity of the sale, and the report not being founded on the personal inspection and judgment of the commissioner. *The Alliance*, 186.
35. On a motion for the sale of a cargo pending the hearing, on the ground that it is in a perishing condition, the judgment of the prize commissioners, founded on their inspection, as evidenced by their report, will prevail, unless controlling evidence is produced counteracting their judgment. *The Nassau*, 198.
36. A sale ordered in this case. *Id.*
37. A motion being made by the libellants in a private suit for the sale of the vessel as perishing, and it appearing that the vessel was under capture as prize of war, the motion was denied.
38. The capture as prize overrides and supplants all private liens. *Harlan v. The Nassau*, 199.
39. The rule of the prize law is, that the master and some of the crew of a prize vessel must be brought in to be examined as witnesses to the facts attending the seizure. *The Actor*, 200.
40. The rule will be dispensed with in a case where there is no physical means of complying with it on the part of the captors. *Id.*
41. Where the personal production of the ship's company is satisfactorily excused, the court will suspend proceedings in the cause, or admit secondary evidence. *Id.*
42. In this case none of the ship's company being produced as witnesses, and there not being sufficient evidence to condemn the vessel under the practice of the English prize court, the court allowed the libellants time, not exceeding a year and a day from the institution of the suit, to produce proof that the vessel was arrested in fact and was lawful prize of war, and that the more direct testimony usually produced to that end was not legally at command of the libellants. *Id.*
43. This vessel having been sent in to the court as a prize, the court, on the application of the district attorney before libel filed, and before any appearance by any claimant, and without notice to any claimant, made an order appointing appraisers to value the prize, with the view to her being taken for the use of the government. After the libel was filed, the claimant appeared in the suit, and moved to vacate the order because it was made without notice to him. *Held*, that the motion could not be granted. *The Memphis*, 202.
44. The fact that the order appointing appraisers was signed by the judge when out of this district is no objection to its validity. *Id.*
45. The practice of this court is settled, that where the captors desire to take to their own use the property captured as prize, its value is to be ascertained by sworn appraisal, and deposited in court, or in the treasury, subject to the order of the court. *The Ella Warley*, 204.
46. The court prefers this method to that of taking bail, and regards a sworn appraisal as a more satisfactory mode of ascertaining the value of prize property than an auction sale. *Id.*
47. The authority of the court to appraise property captured as prize, and to transfer it to the use of the government before condemnation, at its appraised value, maintained. *The Ella Warley*, 207.
48. Motion by the libellants for the sale of the vessel, because she is in a perishing condition, granted. *The Ella Warley*, 213.
49. Redress for wrongs committed by the captors, or for want of diligence in proceeding to the trial of the case, cannot be had by way of defence in the prize suit. It must be sought for by proper pleadings and further proof. *The Joseph H. Toone*, 223.
50. The court cannot, in a prize case, notice, on final hearing, exceptions to proceedings before the prize commissioners, because of alleged irregularities in the admission of testimony, or in the method of conducting the examinations, or to the competency of the witnesses examined. Relief in respect to such matters must be sought by a special motion, on notice to the district attorney, pointing out the irregularities complained of. *The Ezilda*, 232.
51. In this case the court had condemned the cargo, but had withheld condemnation of the vessel, on the ground that no motion had been returned against her. Afterwards, the court, on the application of the libellants, made an order, under the 44th admiralty rule of the Supreme Court, no notice by motion having been given to the owner of the vessel, and she not being in port, that the motion be served on the proctor for the owner. It having been so served, the proctor appeared in court and made, under oath, an exception in writing on behalf of the owner against the requirements of the motion, the district attorney at the same time moving for a decree of condemnation against the vessel for want of an answer to the libel. *Held*, that the proceedings were regular, and that the vessel must be condemned. *The Joseph H. Toone*, 258.

52. This court, as a prize court, has no power to open a decree after the expiration of the term or session in which it was rendered. *The Little Weston*, 265.
53. If the vessel and cargo are subject to condemnation, the claimants cannot contest in a prize court the competency of the libellants alone to control the proceeds of the forfeiture. *The Gondar*, 266.
54. Collateral subjects can be controverted in prize cases only by means of pleadings and further proofs, specially authorized by the court after a decision on the first issue. *The Napoleon*, 286.
55. After the lapse of the term in which a decree is rendered in a prize case, the authority of the court to revoke or alter it is extinct. *The Major Barbours*, 310.
56. An order was made by the court in this case that the marshal open the packages of cargo found on board of this vessel, covered by two of the bills of lading found on board, and take an inventory of their contents, their contents not being specified in any papers found on the vessel. *The Springbok*, 349.
57. A claimant in a prize suit can, under the rules of the court, cause the suit to be disposed of, if the libellants are guilty of any wrongful delay in its prosecution. *Id.*
58. The right of a belligerent to visit and search a neutral vessel in time of war implies a power in the prize court of the belligerent to which a captured neutral vessel is sent for adjudication, to order, under reasonable precautions and forbearance, an examination of the cargo sufficient to ascertain its character, and then to employ evidence so acquired, as further proof to establish the culpability of the voyage. *Id.*
59. In this case the cargo of the prize vessel, consisting wholly of articles contraband of war, was unladen and inventoried and appraised, and reported to the court, before the hearing. *The Stephen Hart*, 387.
60. Nearly all of the cargo was delivered to the government, for its use, at the appraised value. *Id.*
61. The fact that the test oath to the claim in this case is made not by the claimants but by their proctor, and the peculiar language of the proctor's affidavit, commented on. *The Springbok*, 434.
- See APPEAL.  
 APPRAISER.  
 ARREST, 1, 2.  
 AUCTIONEER.  
 BAIL.  
 CAPTURE, 3, 4, 5.  
 CARGO, 1.  
 CLAIM, 1.  
 CONDEMNATION, 26, 140, 141.  
 COSTS, 3 to 6, 8, 14, 15.  
 DAMAGES, 1.  
 ENEMY, 26.  
 EVIDENCE, 1 to 3, 5, 8 to 15, 17 to 25, 27, 37, 38.  
 FREIGHT, 2.  
 FURTHER PROOF.  
 JURISDICTION, 1 to 3.  
 MAIL.  
 MASTER, 1.  
 PLEADING.  
 PRIZE MONEY, 1, 13.  
 SALE.  
 VESSEL, 2.

**President.**

See BLOCKADE, 1, 3, 32, 66, 71, 73.  
 WAR, 4, 1.

**Privateer.**

See PRIZE MONEY, 4.  
 RESTORATION, 18.

**Prize Commissioner.**

1. The question of the costs taxable to the prize commissioners considered. *The Merrimac*, 585.
2. The act of March 25, 1862, (12 U. S. Stat. at Large, 374,) discussed as to the compensation provided by it for the prize commissioners. *Id.*
3. The tariff of allowances to the prize commissioners, prescribed by the court under that act, explained. *Id.*
4. The act of July 17, 1862, (12 U. S. Stat. at Large, 608,) restricting the compensation of each prize commissioner to \$3,000 per year, discussed. *Id.*
5. The difficulty of carrying out the statutory provisions as to the compensation of the prize commissioners set forth. *Id.*
6. A prize commissioner cannot have taxed to him custody fees in respect of a vessel. *Id.*
7. Custody fees to a prize commissioner in respect of a cargo, are a personal allowance to him for an individual trust executed by him. No third person is authorized to assume such custody, and a charge by a prize commissioner of such fees, where his possession of the cargo was merely constructive, and not personal, will not be allowed. *Id.*
8. The court refused to allow to a prize commissioner a charge of one per cent. on the proceeds of a vessel and cargo, as custody fees, for holding them in possession less than thirty days, and until they came into the custody of the marshal, on a warrant of arrest. *Id.*
9. A charge by the prize commissioner, in his bill of costs, of one per cent. custody fee on the proceeds of the vessel and cargo, disallowed. *The Hattie*, 585.
10. The act of July 17, 1862, (12 U. S. Stat. at Large, 606, sec. 12,) forbids the allowance to a prize commissioner in this district of any larger emolument than a salary of \$3,000 a year. *Id.*

See APPEAL, 2.  
 APPRAISER, 3.  
 COSTS, 3 to 6.  
 EVIDENCE, 8, 32, 33.  
 PRACTICE, 3, 34 to 36, 50.  
 SALE, 2.

**Prize Master.**

See JURISDICTION, 4.

**Prize Money.**

1. The proper practice suggested on references to ascertain what vessels are entitled to share in a prize. *The Anglia*, 566.
2. The right to all prize captures vests primarily in the government; and individuals derive no benefit from them except by means of positive grant from the public authority. *Id.*

3. Every vessel of a blockading squadron is bound to do all in its power in the service to be performed, and the law presumes that that obligation is fulfilled unless the contrary be proved. *Id.*
  4. The rule is different with respect to joint associations or enterprises for war purposes by privateers or cruisers owned by individuals. *Id.*
  5. The doctrine of reasonable or equitable reward has no place in an inquiry as to the distribution of prize money to national vessels under the statutes on that subject. *Id.*
  6. The single fact that a vessel is one of a common force does not constitute her a participant in the prize shares obtained by the separate members of the force. *Id.*
  7. It must also be shown that the vessel was "in sight," or "within signal distance," of the occurrence out of which the taking of the prize was realized. *Id.*
  8. She must have been so situated as to be able, of her own accord, to contribute direct assistance to the captors by deterring the enemy from resistance, or by aiding physically in overcoming such resistance; and the vessel to be aided must have possessed the means of communicating intelligent directions to the one whose aid was needed. *Id.*
  9. The acts of Congress on the subject contemplate that the vessels should be in view of each other in order to correctly receive and respond to the signals given. *Id.*
  10. Under those acts, a vessel, in order to be entitled to share in the proceeds of prize property, must show that she was within signal distance of the vessel making the prize, in circumstances which might have justified the capturing vessel in demanding and expecting her assistance. *Id.*
  11. The proceeds of property captured as prize of war belong exclusively to the government, and can be distributed or allotted only according to direct and positive authority of law. *The Merrimac*, 384.
  12. Under the acts of March 25, 1862, and July 17, 1862, (12 U. S. Stat. at Large, 375, sec. 4, and 607, sec. 6.) an armed merchant vessel, not in the service of, and having no commission from, the United States, although she is present at the capture of a prize and co-operates therein, is not entitled to share in the proceeds. *Id.*
  13. It appearing that the prize property was captured by a United States steam transport ship, no other vessel co-operating therein, or being within signal distance at the time, and that the prize vessel was of inferior force, the court, to carry into effect the act of June 30, 1864, allowing vessels not of the navy to share in a prize in certain cases, referred it to a commissioner to report the names and employments of the captors on board the transport ship present and engaged in the capture, and the relative compensations properly allowable to them severally. *The Emma*, 607.
- Probable Cause.**
- 1 The fact that a vessel carries clearance papers issued by the enemy does not constitute, of itself, justifiable cause for her capture. *The Sarah Starr*, 69.
- Proceeds.**
- See* BLOCKADE, 59.  
RESTORATION, 1, 2, 4, 5, 8, 11, 14, 16, 17, 20, 21.
- See* APPEAL, 2.  
APPRAISER.  
BAIL, 2 to 4.  
CAPTURE, 11.  
COSTS, 8, 12, 13.  
FREIGHT, 2.  
PRACTICE, 3, 4, 20, 53.  
PRIZE COMMISSIONER, 8, 9.  
RALE, 1.  
VESSEL, 2.
- Process.**
- See* CONDEMNATION, 64.
- Proclamation.**
- See* BLOCKADE, 3, 32, 64, 66, 71, 72.
- Proctor.**
- See* PRACTICE, 51, 61.
- Purchase.**
- See* BLOCKADE, 38.  
CONDEMNATION, 52, 100.  
ENEMY, 15, 16 to 19.  
NEUTRAL, 7 to 9.
- Purchase Money.**
- See* CONDEMNATION, 52.  
ENEMY, 10.
- Purchaser.**
- See* CONDEMNATION, 52.  
ENEMY, 15, 16.
- R.**
- Ratification.**
- See* CAPTURE, 8.
- Rebel.**
- See* CONFISCATION, 1.  
CONDEMNATION, 17, 125.  
ENEMY, 22.  
WAR, 1, 5.
- Rebellion.**
- See* CONDEMNATION, 17, 20, 22, 113.  
CONFISCATION, 1.  
ENEMY, 12, 22.  
WAR, 1 to 4.
- Reference.**
- See* PRIZE MONEY, 1.
- Register.**
- See* BLOCKADE, 3, 8.  
ENEMY, 24.
- Rehearing.**
- See* CONDEMNATION, 166.  
FURTHER PROOF, 6 to 8.

**Repairs.**

See ADVANCE, 1.  
LIEN, 8.  
RESTORATION, 11.

**Report.**

See PRACTICE, 34 to 36.

**Residence.**

See ENEMY, 27 to 29, 32 to 37.

**Restoration.**

1. Vessel released as not being enemy property, and restored on payment of costs, there having been reasonable cause for her seizure. *The Hannah M. Johnson*, 2.
2. Cargo restored, but without costs or damages, there being probable cause for the capture, it being laden in an enemy bottom during the war. *The General Green*, 2.
3. Cargo restored, being neutral property, and there having been no attempt to violate the blockade; but no costs or damages awarded, as the vessel was confiscable in part. *The Forest King*, 2.
4. Cargo, being neutral property, on transportation in a lawful trade, released, without costs to the captors, there having been no probable cause for its arrest. *The Velasco*, 54.
5. Vessel and cargo restored as neutral property, on a lawful voyage, but without costs against the captors, there having been probable cause for the arrest, the vessel having attempted to enter a blockaded port to obtain necessary supplies. *The Argonaut*, 62.
6. An excuse of that kind is looked upon with distrust by prize courts. *Id.*
7. Vessel and cargo, libelled for having been fraudulently employed by the master in unlawfully communicating with the enemy, released. *The Tropic Wind*, 64.
8. The seizure having been made on probable grounds of suspicion, the vessel and cargo were restored without costs or damages against the captors. *Id.*
9. Part of vessel acquitted. *The Mary McRae*, 91.
10. Vessel having been used by the enemy without the knowledge of her owners, and recaptured from the enemy, restored, by consent, with costs to the libellants. *The Henry C. Brooks*, 99.
11. There was probable cause for the seizure, but the vessel was neutral property on a lawful voyage, and was making for a blockaded port for repairs. *The Jane Campbell*, 101.
12. Vessel and cargo restored without costs. *Id.*
13. The further proof introduced by the libellants, on leave, to show an intent to violate the blockade, held not to establish such intent. *The Jane Campbell*, 130.
14. Vessel and cargo restored. The question of costs and damages reserved. *The Labuan*, 165.
15. Vessel discharged for want of legal arrest and prosecution. *The Wave*, 329.
16. Vessel and cargo discharged from seizure and restored to the claimant, with costs and damages, because of a wrongful arrest. *The Glen*, 375.
17. Vessel and cargo released from seizure and restored to the claimants, without damages or costs, with permission to the libellants to move for leave to give further proofs. *The Isabella Thompson*, 377.
18. After condemnation of the vessel and cargo, the decree as to the vessel was opened, by consent, on the application of loyal owners of the vessel, who showed that she had been previously captured from them by a privateer of the enemy. The court ordered the vessel to be restored to such owners on payment of one-eighth of her value, as salvage, to the captors. *The Hattie*, 579.
19. The vessel and cargo were owned by unnaturalized foreigners, residing in the enemy's country, who came in her out of a blockaded port of the enemy, with the sole purpose of escaping with their property from the enemy, and delivering that and themselves to the blockading squadron and to the authority of the United States. *The Evening Star*, 582.
20. Vessel and cargo restored, but without costs, there being probable cause for the seizure and the suit. *Id.*
21. Vessel and cargo acquitted, with costs, there having been no probable cause for their seizure. *The Sybil*, 615.
22. Vessel and cargo released and restored to the claimants. *The Sarah M. Venable*, 629.
23. Decree of the district court, condemning the property, reversed. *32 Sales of Cotton*, 644.
24. The property was captured on a flatboat fastened to a wharf in Texas, and belonged to a citizen and merchant of New York, who went to Texas before the war to collect debts due to him. The cotton was the proceeds, and the claimant used all diligence to collect his effects, with a view to leave the hostile country after the breaking out of the war. *Id.*
25. Vessel and cargo acquitted of a violation of, or of an attempt to violate, the blockade. *The Alliance*, 646.
26. Vessel held to be neutral property. *Id.*
27. Vessel and cargo acquitted of a violation of, or of an attempt to violate, the blockade. *The Gondar*, 649.
28. Decree of the district court condemning vessel and cargo reversed, they not being enemy property, and there having been no violation of, or attempt to violate, the blockade. *The Mercy*, 658.
29. Decree of the district court, condemning vessel and cargo for an attempt to violate the blockade, reversed. *The Empress*, 659.
30. Decree of the district court, condemning the cargo, reversed. *The John Gilpin*, 661.
31. Decree of the district court, condemning the vessel and cargo as enemy property, reversed. *The General C. C. Pinckney*, 668.
32. The claimant left the enemy port with the intent to withdraw from the enemy's country with his effects, and had for that purpose converted his property into the vessel and cargo, and intended to give himself up to the blockading squadron. *Id.*
33. The withdrawal of the property, under the circumstances, did not subject it to capture as enemy property. *Id.*

34. On further proof the vessels and cargoes were held to be neutral property, and ordered to be restored to the claimants. *The Gordar*, 669.
35. Decree of the district court, condemning them, reversed. *Id.*
- See BLOCKADE, 11, 55.
- CONDEMNATION, 10, 157, 160, 162.
- CONFISCATION, 3.
- COSTS, 15.
- EVIDENCE, 23.
- LIEN, 2.

#### Right of Search.

- See SEARCH, 1.
- UNITED STATES.

#### Rules.

- See PRACTICE, 30, 33, 57.

#### S.

#### Salary.

- See DISTRICT ATTORNEY, 4, 8.
- PRIZE COMMISSIONER, 10.

#### Sale.

1. In this case the cargo of the prize vessel, consisting of tobacco, was suffering damage from exposure to the weather and from confinement in the hold of the vessel, and the price of the article had increased since the capture. The cargo having been condemned in the district court, the claimants, after appealing to the circuit court, applied to that court for the delivery of the cargo to them on the usual stipulation. The court denied this application, but appointed commissioners to appraise the cargo, and ordered it to be sold and the proceeds to be brought into court. *The Crenshaw*, 631.
2. In this case, after an affirmance by the circuit court of the decree of the district court condemning the vessel and cargo, and the taking of an appeal to the Supreme Court by the claimants, the circuit court, on the application of the prize commissioners, and on proof that the cargo, consisting of tobacco, was in a perishing condition, ordered it to be sold. *The Hiawatha*, 632.
3. The provisions of the act of March 25, 1862, (12 U. S. Stat. at Large, 374,) in regard to the sale of prize property, *pendente lite*, commented on. *Id.*
4. That act applies to proceedings in the circuit court as well as in the district court. *Id.*
5. The practice under that act prescribed and regulated. *Id.*
6. In this case the prize property was condemned in the district court, and a sale of it was ordered. The claimant appealed to the circuit court from the decree of condemnation, and then applied to that court to stay the sale, which was in progress, on the ground that the appeal operated to remove the cause into the circuit court, and thereby deprived the district court of jurisdiction to issue an execution, or to make a sale of the property under the decree of condemnation in that court. The circuit court ordered the sale to be stayed, and all proceedings under the decree below to be set aside. *The Sunbeam*, 638.

7. The 12th section of the act of July 17, 1862, (12 U. S. Stat. at Large, 608,) and the 4th section of the act of March 25, 1862, (*Id.*, 375,) considered. *Id.*
8. There is nothing in either of these acts which changes the general rules of practice—that no sale can take place under a decree of condemnation in the district court, duly appealed from; that a decree thus appealed from is not a final decree; and that, after the appeal, the cause, with the *res*, is in the circuit court, and subject to its jurisdiction alone. *Id.*
9. The 1st section of the act of March 3, 1863, (12 U. S. Stat. at Large, 759,) respecting sales of prize property condemned, notwithstanding an appeal, relates solely to decrees of condemnation to be thereafter made. *Id.*

- See AUCTIONEER.
- BLOCKADE, 38.
- CONDEMNATION, 52, 141.
- ENEMY, 10, 11, 17 to 19.
- NEUTRAL, 3, 4, 7 to 9.
- PRACTICE, 3, 4, 20, 32, 34 to 37, 48.

#### Salvage.

1. The vessel and cargo having been shipwrecked after seizure, and having been saved by salvors, the court allowed to the salvors, as salvage, one-half of the net proceeds of the salvaged property, deducting the costs incurred by the United States in the prize suit. *The Maria Bishop*, 552.

- See RESTORATION, 18.

#### Seaman.

- See EVIDENCE, 38.

#### Search.

1. The belligerent right of search may be made effective by an examination of the lading, as well as the papers, of a vessel. *The Springbok*, 349.
2. The refusal by the master of a neutral merchant vessel to permit the papers of his vessel to be taken on board of a belligerent cruiser when demanded, to be there examined by the commander of the cruiser, especially after those papers have been already so far examined on board of the merchant vessel, by a subordinate officer from the cruiser, as to excite suspicion concerning their regularity, is, on the part of the neutral master, a resistance to the right of visitation and search, even though he offers his papers for examination on board of his own vessel, and his vessel for search. *The Peterhoff*, 463.

- See CAPTURE, 6.
- UNITED STATES.

#### Secretary of the Navy.

- See COSTS, 12.

#### Secretary of the Treasury.

- See LIEN, 2.

#### Seizure.

- See ARREST.
- BLOCKADE, 18, 37, 43 to 47, 54, 55, 63.
- CAPTURE, 3 to 8.



See CONDEMNATION, 52, 73, 76, 78, 100, 113, 125 to 127.  
 COSTS, 14, 15.  
 DAMAGES, 1.  
 ENEMY, 16, 31, 35 to 37.  
 EVIDENCE, 1 to 3, 5, 15.  
 FURTHER PROOF, 4, 5.  
 JURISDICTION, 5 to 10, 12.  
 LIEN, 4.  
 PRACTICE, 5, 11, 19 to 21, 42.  
 RESTORATION, 1, 2, 4, 6, 8, 11, 15 to 17, 20, 20, 21.  
 SALVAGE.  
 SPOILIATION, 13.

#### Shipper.

See EVIDENCE, 16.

#### Signal.

See PRIZE MONEY, 7 to 10, 13.

#### Spoilation.

1. Spoilation of papers not explained by satisfactory proof. *The Zavalla*, 173.
2. The intentional mutilation of the log-book of the vessel is convincing evidence of an attempt by her to perpetrate a fraud, in violation of the law of nations, for which she and her cargo are subject to forfeiture. *The Mercy*, 187.
3. It will always be inferred that the papers of a vessel which have been destroyed related to the vessel or cargo, and that it was of material consequence to some unlawful interests that they should be destroyed. *Id.*
4. The spoliation of papers is not *per se* a ground for necessarily condemning a vessel, but it raises a strong presumption of fraudulent purposes in those having charge of her, which will effect her condemnation if not satisfactorily accounted for. *Id.*
5. The particulars of the mutilation of the log-book in this case stated. *Id.*
6. The log-book was mutilated with intent to mislead and deceive with regard to the purposes of the voyage, in fraud of the belligerent rights of the United States, and the culpability thus shown, coupled with other marks of disguised and dishonest practices, demands the condemnation of vessel and cargo. *Id.*
7. Spoilation of papers by the master. *The Tubal Cain*, 240.
8. Spoilation of papers by the master. *The Ann*, 242.
9. Spoilation of papers by the master. *The Little*, 243.
10. Imperfection and mutilation of the log-book. *The Stettin*, 272.
11. Mutilation and imperfection of log-book. *The Albert*, 280.
12. Mutilation and alteration of log-book. *The Maria*, 283.
13. The mutilation of the log-book of a vessel is sufficient cause for her condemnation as prize if she was seized under circumstances which placed it in her power to violate a blockade, unless the mutilation is clearly and satisfactorily explained by the proofs. *The Ella Warley*, 288.
14. Spoilation of papers. *The Ouachita*, 306.
15. Spoilation of papers. *The Granite City*, 355.
16. Spoilation of papers. *The Douro*, 362.

17. Letters of instruction not delivered up by the master to the prize-master at the time of capture, but only produced by him on his examination on the standing interrogatories. *The Stephen Hart*, 367.

18. Attempted suppression, by the first officer of the vessel, of letters showing an intention to violate the blockade. *Id.*

19. The spoliation of papers is a strong circumstance of suspicion. It is not, however, either in England or in the United States, held to furnish, of itself, sufficient ground for condemnation, but is a circumstance open to explanation. But if the explanation be not prompt and frank, or be weak or futile, if the cause labors under heavy suspicions, or if there be a vehement presumption of bad faith or gross prevarication, it is ground for the denial of further proof, and the condemnation ensues from defects in the evidence which the party is not permitted to supply. *Id.*

20. Papers on board of the vessel were destroyed at the time of her capture, some by being burned and some by being thrown overboard by order of the master. *The Patrick*, 463.

21. False evidence of the master as to the destruction of the papers. *Id.*

22. The spoliation of papers on board of a neutral vessel, when overhauled by a belligerent cruiser, is of itself a strong circumstance of suspicion. *Id.*

23. In England and in the United States spoliation of papers is not held to furnish of itself sufficient ground for condemnation, but to be a circumstance open to explanation; yet, if the explanation be not prompt or frank, or be weak and futile, if the cause labors under heavy suspicions, or if there be a vehement presumption of bad faith or gross prevarication, it is ground for the denial of further proof, and condemnation ensues from defects in the evidence, which the party is not permitted to supply. *Id.*

24. Destruction of the vessel's papers by her master just before capture. *The Emma*, 561.

25. Mutilation of the log-book and destruction of papers. *The Ella Warley*, 548.

See CONDEMNATION, 24.  
 EVIDENCE, 30.

#### Statutes-commented on.

##### UNITED STATES:

- 1849, March 3, Prize Money, 61.
- 1853, February 26, Costs and Fees, 206, 601.
- 1861, July 13, Confiscation, 1, 52, 69, 91, 92, 119, 127, 291, 382.
- 1861, August 6, Confiscation, 1, 52, 69, 382.
- 1861, August 6, District Attorney of New York, 337.
- 1862, March 25, Compensation of Officers, 206, 337, 585, 601.
- 1862, March 25, Costs in Prize Cases, 635.
- 1862, March 25, Prize Money, 584.
- 1862, March 25, Sale of Prize Property, 632, 638.
- 1862, July 17, Compensation of Officers, 585, 595, 601.
- 1862, July 17, Prize Cases, 310, 337, 638.
- 1862, July 17, Prize Money, 584.
- 1863, March 3, Confiscation, 362.

1863, March 3, District Attorney's Costs, 337.  
1863, March 3, Sale of Prize Property, 638.  
1864, June 30, Costs, 610.  
1864, June 30, Prize Money, 607.

**Smit.**

See CONDEMNATION, 64.  
DISTRICT COURT.  
ENEMY, 31.  
JURISDICTION, 7, 9.  
PLEADING, 1, 7 to 10.  
PRACTICE, 37, 54, 57.  
RESTORATION, 20.  
WAREHOUSEMAN.

**Supercargo.**

See EVIDENCE, 9.

**Supplies.**

See ADVANCE.  
BLOCKADE, 14.  
RESTORATION, 5, 6.

**Supreme Court.**

See APPEAL, 1, 2.  
BLOCKADE, 66, 71.  
SALE, 2.

**Survey.**

See CONDEMNATION, 40.  
JURISDICTION, 2.

**T.**

**Taxation.**

See COSTS, 3 to 6.

**Test Oath.**

See CARGO, 3.  
CLAIM, 1.  
PLEADING, 4, 6, 12.  
PRACTICE, 25, 28, 61.

**Title.**

1. In prize law, a bill of lading transmitted to a party to cover his advances on cargo shipped does not pass the title to the cargo. *The Lynchburg*, 3.  
See BLOCKADE, 57 to 59.  
CAPTURE, 10, 11.  
ENEMY, 3, 10, 11, 23 to 25.  
NEUTRAL, 3, 4, 7, 8.  
OWNER.

**Towage.**

See COSTS, 14.

**Trade.**

See BLOCKADE, 36, 49, 60.  
CAPTURE, 2.  
CLAIM, 1.  
CONDEMNATION, 73, 113, 127, 128.  
CONTRABAND OF WAR.  
ENEMY, 2, 12, 14 to 16, 18, 19, 28, 35 to 37.  
EVIDENCE, 27, 36.  
INVOICE, 2.  
NEUTRAL, 10 to 20.

**Transfer.**

See CONDEMNATION, 52.  
ENEMY, 5 to 8, 10, 11, 23 to 25.  
NEUTRAL, 7.

**Transport.**

See CAPTURE, 7.  
PRIZE MONEY, 13.

**Treasury.**

See DISTRICT ATTORNEY, 9.

**Treaty**

See ENEMY, 35.  
NEUTRAL, 5.

**Trial.**

See CAPTURE, 4.  
PRACTICE, 49.

**U.**

**Underwriter.**

See CLAIM, 2.

**United States.**

1. The views of the members of the government of Great Britain as to the administration of prize law by the courts of the United States during the present war, as to the belligerent right of search, as to violation of the blockade, and as to the carrying of articles contraband of war, stated. *The Stephen Hart*, 387.  
See BLOCKADE, 1, 54.  
CAPTURE, 1, 3 to 5, 8, 11.  
CLAIM, 1.  
CONDEMNATION, 40, 97, 100, 113.  
CONFISCATION, 2.  
COSTS, 1.  
ENEMY, 1, 15, 16, 19, 22, 35.  
EVIDENCE, 15, 28.  
FREIGHT, 3, 4.  
JURISDICTION, 2, 5, 6.  
MAIL.  
MASTER, 1.  
NEUTRAL, 5.  
PRACTICE, 6, 43, 45, 47, 60.  
PRIZE MONEY, 2, 11, 12.  
RESTORATION, 19.  
SALVAGE.  
SPOILIATION, 6, 19.  
WAR, 1, 3 to 5.  
WAREHOUSEMAN.

**V.**

**Vessel.**

1. A vessel is clothed with the character of the flag she wears. *The Hallie Jackson*, 2.  
2. One-eighth of the vessel being condemnable in any event, the libellants have a right to enforce their remedy against her as an entirety, whether they retain or remit the proceeds. *The Napoleon*, 357.  
3. In this case it was held that the claimant of the vessel had given up the entire control of her movements to the owners of her cargo, and had involved her in any illegality of which they or her master had been guilty in respect to the cargo. *The Stephen Hart*, 387.

4. *Held*, that the claimant of the vessel was, under the circumstances of this case, responsible for the use to which the master and the claimants of the cargo put the vessel, namely, the carrying, for a portion of the distance on its way to the enemy's country, of a cargo contraband of war, intended for the use of the enemy, and to enter the enemy's port by a violation of the blockade. *The Stephen Hart*, 387.

See ADVANCE.

ARREST, 2, 3.

BLOCKADE, 3, 5 to 9, 12, 17 to 20, 22 to 27, 29 to 33, 36 to 55, 57 to 59, 61 to 63, 65 to 74.

CAPTOR, 2.

CAPTURE, 1 to 4, 6 to 8, 11.

CARGO, 1, 2, 4, 5.

CONDEMNATION, 1 to 3, 6, 7, 9 to 17, 19, 21 to 29, 91 to 96, 98, 99, 101 to 103, 105 to 170.

CONFISCATION, 1, 3.

CONTRABAND OF WAR, 3, 4 to 14, 19 to 27.

COSTS, 14.

DESTINATION.

ENEMY, 2, 6 to 10, 12 to 15, 21 to 24, 35.

EVIDENCE, 1 to 15, 17, 19 to 21, 24, 26, 35, 37, 38.

FREIGHT, 1.

FURTHER PROOF, 1 to 6, 10 to 12.

INTERVENTION.

INVOICE.

JURISDICTION, 1 to 3, 5 to 7, 12.

LIEN, 1 to 3, 7, 8.

MASTER, 3 to 6.

NEUTRAL, 1, 6 to 18.

PAPERS.

PASSENGER.

PLEADING, 4.

PRACTICE, 3, 7 to 9, 16 to 19, 21, 32, 37 to 43, 48, 51, 53, 56, 58.

PRIZE COMMISSIONER, 6, 8, 9.

PRIZE MONEY, 1 to 10, 12, 13.

PROBABLE CAUSE.

RESTORATION, 1 to 3, 5 to 12, 14 to 22, 25 to 29, 31 to 35.

SALE, 1, 2.

SALVAGE.

SEARCH.

SPOILIATION.

WAGES.

**Vessel-of-War.**

See CAPTURE, 7, 11.

**Visitation.**

See SEARCH.

**Voyage.**

See BLOCKADE, 39, 40, 42, 48, 51, 55, 57 to 59, 65, 71.

CAPTURE, 2.

ENEMY, 20.

FURTHER PROOF, 5.

NEUTRAL, 10 to 16.

PAPERS, 10, 14.

PRACTICE, 58.

**W.**

**Wages.**

1. A claim of the crew for their wages rejected, on the ground that the vessel was enemy property. *The Velasco*, 54.

**War.**

1. The existing war between the United States and the rebels is a defensive war on the part of the former. No formal declaration of war by the President was necessary to render lawful the means adopted by him to repel the warlike measures of the enemy. *The Hianatha*, 1.

2. Under the law of nations, the rights incident to a war waged by a government to subdue an insurrection or revolt of its own subjects or citizens are the same, in regard to neutral powers, as if the hostilities were carried on between independent nations. *Id.*

3. The hostilities commenced against the United States by the seceded States have produced a state of war between the two communities, as consequent to which the United States are authorized to employ against their enemies the means of resistance and attack, by land or naval forces, which are justifiable under the law of nations. *The Sarah Starr*, 60.

4. A blockade of the ports of their enemy is one of such lawful means, and is incident to the war power, and may be imposed by the President *flagrante bello*, without any act of the legislature declaring it. *Id.*

5. The hostilities subsisting between the government and the rebels have the character and attributes of a public war, and the rules of national law applicable to wars of that description govern the rights and liabilities of persons whose property is captured, as prize of war, during such hostilities. *The Mary Clinton*, 556.

See BLOCKADE, 1, 2, 38, 49, 52 to 54, 60, 64.

CAPTURE, 9, 10.

CASES COMMENTED ON, 3.

CONDEMNATION, 97, 100.

CONFISCATION, 2.

CONTRABAND OF WAR.

ENEMY, 1, 2, 7, 8, 11, 13, 15 to 19, 21, 22, 32 to 37.

INVOICE, 2.

LIEN, 8.

MASTER, 4, 6.

NEUTRAL, 3, 4, 17, 18.

PAPERS, 1, 16.

PRACTICE, 33, 58.

RESTORATION, 2, 24.

UNITED STATES.

**Warehouseman.**

1. In this case, after the decree of this court condemning the property seized as prize had been reversed by the circuit court on appeal, and the property had been restored to the claimant, a warehouseman presented his bill of charges for services in regard to the property rendered under the official employment of the officers of the court. The court allowed the bill, the amount being a charge upon and payable out of the fund for defraying the expenses of suits in which the United States is a party or interested, under section 14 of the act of June 30, 1864, (13 U. S. Stat. at Large, 311.) 282 *Bales of Cotton*, 610.

<b>Warning.</b> <i>See</i> BLOCKADE, 3, 8, 12, 17, 32, 33, 66, 71.	<b>Witness.</b> <i>See</i> CONDEMNATION, 140. EVIDENCE, 1 to 4, 8 to 12, 14, 15, 17 to 24, 29 to 33, 37, 38. FURTHER PROOF, 4, 10. PRACTICE, 34, 39 to 42, 50. SPOILIATION, 17.
<b>Warrant.</b> <i>See</i> PRIZE COMMISSIONER, 8.	<b>Wreck.</b> <i>See</i> CONDEMNATION, 157.
<b>Wharfage.</b> <i>See</i> COSTS, 14.	











